HORACE MANN'S LETTERS

ON

THE EXTENSION OF SLAVERY

INTO

CALIFORNIA AND NEW MEXICO;

AND ON

THE DUTY OF CONGRESS TO PROVIDE THE TRIAL BY JURY FOR ALLEGED FUGITIVE SLAVES.

[REPUBLISHED WITH NOTES.]

LETTER I.

WEST NEWTON, *May* 3, 1850.

To the Hon. James Richardson, I. Cleveland, and John Gardner, of Dedham; Hon. D. A. Simmons, John J. Clarke, Francis Hilliard, and George R. Russell, of Roxbury, &c., &c.

GENTLEMEN: Having been called home on account of sickness in my family, I have just received, at this place, your kind invitation to meet and address my constituents of the 8th Congressional District, and to give them my "*views and opinions upon the question of the immediate admission of California, and other questions now before Congress arising out of the acquisition of territory by the treaty with Mexico.*"

A request from so high a source has almost the force of a command. Yet I dare not promise to comply. I am liable at any moment to be recalled, and, instead of speaking here, to vote there, upon the question to which you refer. I might be summoned to return on the day appointed for us to meet. The only alternative, therefore, which is left me, is to address you by letter. This I will do, if I can find time. I shall thus comply with your request, in substance, if not in form.

On many accounts, I have the extremest reluctance to appear before the public on the present occasion. My views, on some vital questions, differ most materially from those of gentlemen for whom I have felt the profoundest respect; and for some of whom I cherish the strongest personal attachment. But I feel, on the other hand, that my constituents, having intrusted to me some of their most precious interests, are entitled to know my "views and opinions" respecting the hopes and the dangers that encompass them. I shall not, therefore, take the responsibility of declining.

I will premise further, that my relations to political parties, for many years past, have left me as free from all partisan bias "as the lot of humanity will admit." For twelve years I held an office whose duties required me to abstain from all active coöperation in political conflicts; and that duty was so religiously fulfilled, that, to my knowledge, I was never charged with its violation. During the Presidential contest of 1848, those obligations of neutrality still rested upon me. For a year afterwards, I was not called upon to do any official act displeasing to any party amongst us. This interval I employed in forming the best opinion I could of public men and measures, and their influence upon the moral and industrial interests of the country. I had long entertained most decided convictions in favor of protecting American labor, in favor of cheap postage, and of security to the lives and property of our fellow-citizens engaged in commerce. But a new question had arisen,—the great question of freedom or slavery in our recently acquired territories,—and this question I deemed, for the time being, to be, though not exclusive of others, yet paramount to them. Or rather, I saw that nothing could be so favorable to all the last-named interests, as the proper adjustment of the first. He who would provide for the welfare of mankind must first provide for their liberty.

Sympathizing, then, on different points with different parties, but exclusively bound to none, I stood, in reference to the great question of territorial freedom or slavery, in the position of the *true* mother in the litigation before Solomon, preferring that the object of my love should be spared in the hands of any one, rather than perish in my own.

Our present difficulties, which, as you well know, have arrested the gaze of the nation, and almost suspended the legislative functions of Congress, pertain to the destiny of freedom or of slavery, to which our new territories are to be consigned. After the acquisition of Louisiana, and Florida, and Texas, for the aggrandizement and security of the slave power; after the aboriginal occupants of the soil of the Southern States have been slaughtered, or driven from their homes, at an expense of not less than a hundred millions of dollars, and at the infinite expense of our national reputation for justice and humanity; and after the area of the slave States has been made

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almost double that of the free States, while the population of the free is about double that of the slave; the reasons seem so strong that they can hardly be made stronger, why the career of our Government as a slavery-extending power, should be arrested. On the other hand, the oligarchy who rule the South, seeing that, notwithstanding their rich and almost illimitable domain, they are rapidly falling behind the North in all the distinctive elements of civilization and well-being,—industry, temperance, education, wealth,—not only defend the Upas that blasts their soil, as though it were the Tree of Life, but seek to transplant it to other lands. With but about three slaves to a square mile,—three millions of slaves to nearly a million of square miles,—they say they are too crowded, that they feel a sense of suffocation, and must have more room, when all their weakness and pain proceed, not from the limited quantity, but from the malignant quality of the atmosphere they breathe. Hence the war with Mexico, commenced and prosecuted to add slave territory and slave States to the Southern section. Hence the refusal to accept propositions of peace, unless territory *south* of latitude 36 deg. 30 min. (the Missouri Compromise line, so called.) should be ceded to us. Hence when the Mexican negotiators proposed to insert a prohibition of slavery in the treaty of cession, and declared that the Inquisition would not be more odious to the American people than the reinstitution of slavery to them, our minister, Mr. Trist, told them he would not consent to such a prohibition, though they would cover the soil a foot deep with gold. And hence, also, the determination of a portion of the Southern members of Congress, to stop the whole machinery of the Government, to sacrifice all the great interests of the country, and assail even the Union itself, unless slavery shall be permitted to cross the Rio Grande, and enter the vast regions of the West, as it heretofore crossed the Mississippi and the Sabine.

Even in 1846, when the war against Mexico was declared, all men of sagacity foresaw the present conflict. Could that question have been decided on its merits; or could the institutions to be planted upon the territory we might acquire, be determined by the unbiased suffrages of the American people, no war would have been declared, and no territory acquired. But the great political leaders of the South expected to make up both for their numerical weakness and for the injustice of their cause, by connecting the question of slavery-extension with that of future Presidential elections, and with the strife of parties. They promised themselves that they could draw over leading Northern men to their support, by offering them the Tantalus cup of Presidential honors; and then by the force of party cohesion and discipline insure the support of the whole descending-scale of office expectants. Early in the present session of Congress, it was distinctly declared from a high Southern source, that the South must do most for those Northern men who would do most for them A few words will make it apparent how faithfully this plan has been adhered to, and how successful it may become.

No Northern Democrat, opposed to slavery extension, could expect the support of the Southern Democracy. Hence, Gen. Cass stept promptly forward, and declared in his Nicholson letter, that Congress had no power to exclude slavery from the territories. This has been technically called his "bid," or his "first bid." It was deemed satisfactory by the South; for, according to their philosophy, the relation of master and slave is the natural or normal relation of mankind; and therefore, where no prohibition of it exists, slavery flows into free territory, as water runs down hill. This avowal of Gen. Cass was rendered more signal and valuable to the South, because, for the greater part of his political life, he had taken oaths, held offices and administered laws, in undeniable contradiction to the declaration then made. The Ordinance of 1787 was expressly recognised by the First Congress, held under the Constitution, [See ch. 8] It was modified in part, and confirmed as to the rest; and in holding offices under this, Gen. Cass had laid the foundation of his honors and his fortune. His declaration, therefore, against all interdiction of slavery, made under circumstances so extraordinary and in contradiction of the whole tenor of his past life, was hailed with acclamation by the South, and he was unanimously declared, at Baltimore, to be the accepted candidate of the Democracy, for the office of President. The common notion is that a man shows his love for a cause by the amount of sacrifice he will make for it; and as consistency, honor and truth, are the most precious elements in character, who could sacrifice more than he!

To the honor of the Whig party be it said, there was not a Northern man to be found, who, to gain the support of the South, would espouse its pro-slavery doctrines, or invent any new reading of the Constitution to give them a semblance of law. Hence, at the Philadelphia Convention, no Northern Whig received even so much as a complimentary vote. The judicial eminence of Judge McLean, the military eminence of Gen. Scott, were passed contemptuously by; and Mr. Webster, acknowledged to be the greatest statesman of the age, received but fourteen votes, out of almost three hundred; and twelve of these were from Massachusetts. Mr. Webster had spoken more eloquent words for Liberty than any other living man, and this distinguished neglect was doubtless intended to teach him the lesson, that the path to Presidential honors did not lie through an advocacy of the rights of man. Gen. Taylor was nominated and chosen. He was understood to take neutral ground. Discountenancing the veto power, yet, if the House of Representatives, who are chosen directly from and by the people, and the Senate who are chosen by the States, will pass a territorial bill, either with or without a prohibition of slavery, he will approve it. This is the common opinion, and I have no doubt of its correctness.

Under these circumstances, a most desperate effort was made at the close of the last Congress to provide a Government for the territories, with no prohibition of slavery. Had Gen. Cass been elected, no such effort would have been necessary, for he was pledged to veto a prohibition. Gen.

Taylor was supposed to be pledged to an opposite course; and hence the struggle. The facts must be so fresh in the recollection of all that they hardly need to be recounted. The House performed its duty to the country and to freedom, by sending territorial bills to the Senate, containing the prohibitory clause. The Senate, equalling the Northern by its Southern votes, and far outnumbering the Whigs by its Democrats, left those bills to sleep the sleep of death upon its table. But during the closing hours of the session, it foisted a provision for the Government of the territories, into the general appropriation bill; and held out the menace that this bill should not pass at all, unless the territorial clause should pass with it. The flagitiousness of this proceeding, it is difficult to comprehend and impossible to describe The appropriation bill is one on which the working, and even the continuance of the Government depend. Without it, the machinery of the State must cease to move. Contracts by the Government to pay money must be violated. Officers cannot obtain their salaries. Families must be left without subsistence. If long continued, all judges would resign and courts be broken up; and when justice should cease to be administered, violence, robbery, and every form of crime would run riot through the land.

Besides, an appropriation bill and a bill for the government of Territories, have no congruity with each other; they are not relevant; neither is germane to the other. Every one knows it to be a common parliamentary rule that when a proposition is submitted which is susceptible of division, any *one* member has a right to demand it. All bills, too, for raising revenue, must, by the Constitution, originate in the House; and the House has as much right to interfere to prevent the Senate from ratifying a treaty, as the Senate has to obstruct the passage of a revenue bill, by adding to it extraneous provisions. It was this effort on the part of the Senate to incorporate into the appropriation bill a provision most unrighteous in itself and most odious to the free sentiments of the North, which led to the protracted session on the night of the 3d of March, 1849. The course of the pro-slavery leaders, on that occasion, resembled that of a madman who should seize a torch, and stand over the magazine of a ship, and proclaim that he would send men and vessel to destruction, unless they would steer for his port. A portion of the House confederated with the majority of the Senate in this unprincipled machination; but the larger number stood undaunted, and after perils such as so precious an interest never before encountered, the pro-slavery amendment was stricken out, and its champions were foiled. Through that memorable night, the friends of freedom wrestled like Jacob with the angel of God, and though the session did not close until the sun of a Sabbath morning shone full into the windows of the Capitol, yet a holier work never was done on that holy day.

It was with a joy such as no words can ever express, that I saw the Territories rescued from the clutch of slavery by the expiration of the Thirtieth Congress. I felt confident that when the Thirty-first Congress should assemble, it would be under better auspices, and with a stronger phalanx on the side of freedom. In regard to California, those hopes have been fulfilled; but I proceed to state how they have been nearly extinguished in regard to the residue of the territory.

Our first disaster was the election of a most adroit, talented and zealous pro-slavery Speaker. A better organ for the accomplishment of their purposes the friends of Slavery could not have found, nor the friends of Freedom a more formidable opponent. Whilst the pro-slavery champions of the South, almost without distinction of party, exulted over this triumph, it has been the occasion of most lamentable criminations and recriminations at the North. Southern men abandon all distinctions of Whig or Democrat for the cause of Slavery; would to God we could do as much for the cause of Freedom.

The choice of a pro-slavery Speaker was immediately followed by the appointment of most ultra pro-slavery committees. Some Free Soil members, it is true, were placed upon these committees; but in this the Speaker only carried out more fully his own purposes and those of his party, by putting what they considered as insane men into close custody, instead of letting them run at large. He showed, however, either a want of courage in himself, or of confidence in his chosen guards; for, on the District of Columbia Committee he detailed a file of five, on the Judiciary Committee a file of four, and on the Territorial Committee a file of six strong pro-slavery men for the safe keeping of one Free-Soiler.

Within an hour after the House was organized, Mr. Root of Ohio submitted a resolution, instructing the Committee on Territories to report Territorial bills, prohibiting slavery. Many true friends to freedom believed this movement to be ill-timed and unfortunate; and though the House then refused, by a handsome vote, to lay the resolution on the table, yet when it came up for consideration again, the first decision was reversed by about the same majority. There is abundant proof that the latter vote did not express the true sentiment of the House. Not a few voted against the resolution avowedly because of its paternity,—thus spiting a noble son on account of its obnoxious father. Others repented of their votes as soon as they came to reflect that the record would go where their explanation could not accompany it.

But unfortunately, it was too late. There stands the record, to survive through all time, and to be read of all men. The champions of slavery seized upon this vote as a propitious omen. They derided and scouted the Proviso with a fierceness unknown before. They shouted their threats of disunion with a more defiant tone, should any attempt at what they called its resurrection, be made. A speech was delivered, in which a massacre of a majority of the House was distinctly shadowed forth, so that not "a quorum should be left to do business." The effect of that vote was almost as bad as though it meant what it said.

At a later day, when a bill for the admission of California was presented, the tactics of delay were resorted to, and midnight found us calling the yeas and nays, for more than the thirtieth time,

on questions whose frivolousness and vexatiousness cannot be indicated by numbers.

The proceedings in the Senate, however, are those which now threaten the most disastrous consequences. Early in the session, in order to bring his Northern friends up to the doctrine that it is unconstitutional to legislate upon slavery in the Territories, General Cass made a speech, in which he denies that Congress has *any* power, under *any* circumstances, to pass *any* law respecting their inhabitants. According to that speech, the United States stands in the relation of a foreign Government to the people of its own Territories; and if they set up a king or establish a religion, we cannot help it; for we have no more power or right to control them, than we have the subjects of Great Britain, or the citizens of France. It has been said that the doctrine of General Cass and that of General Taylor, on this subject, are identical; but there is this all-important difference between them: General Taylor maintains the right of Congress to legislate for the Territories, and will doubtless approve any bill for the prohibition of slavery in them; but General Cass, denying this right in Congress, would, if President, veto such a bill. He, therefore, would leave the Territories open to be invaded and possessed by slavery; and in Southern law and practice, possession is more than nine points.

Next came Mr. Clay's Compromise resolutions, so called. By these, California was to be admitted as a State; the Territories organized without any restriction upon slavery; the Southwestern boundary of Texas to be extended to the Rio Grande; a part of her twelve or fifteen million debt to be paid by the United States, on condition of her abandoning her claim to a part of New Mexico lying east of the Rio Grande; the abolition of the slave trade in the District of Columbia, and the inviolability of slavery in the District during the good pleasure of Maryland and of the inhabitants of the District; more effectual provision for the restitution of fugitive slaves, and free traffic in slaves forever between the States, unless forbidden by themselves.

A compromise is a settlement of difficulties by mutual concessions. Let us examine the mutuality of the concessions which Mr. Clay's resolutions propose.

In the first place, California is to be permitted to remain free, if the Territories of New Mexico and Utah may be opened to slavery. But California is free already; free by her own act; free without any concession of theirs, and without any grace but the grace of God. It is mainly occupied by a Northern population, who do their own work, with their own hands, or their own brains. Fifty hardy gold diggers from the North will never stand all day knee-deep in water, shovel earth, rock washers, &c., under a broiling sun, and see a man with his fifty slaves standing under the shade of a tree, or having an umbrella held over his head, with whip in hand, and without wetting his dainty glove, or soiling his japanned boot, pocket as much at night as the whole of them together. Or rather, they will never suffer institutions to exist which tolerate such unrighteousness. California, therefore, is free; as free as Massachusetts; and Mr. Clay might as well have said in terms, that whereas Massachusetts is free, therefore New Mexico and Utah shall be slave, or run the hazard of being so.

The next point of Mr. Clay's compromise is, that Texas shall extend her southwestern boundary from or near the Nueces to the Rio Grande, and shall receive, probably, some six or eight millions of dollars for withdrawing her claim to that part of New Mexico which lies east of the last-named river. Now, Texas has no rightful or plausible claim to a foot of all this territory. But suppose it to be a subject of doubt, and therefore of compromise. The mutuality, then, consists in dividing the whole territory claimed by Texas, and then giving her a valid title to one portion of it, and paying her for all the rest. Texas, or,—what in this connection is the same thing,—slavery, surrenders absolutely nothing, gets a good title to some seventy thousand square miles of territory, and pay for as much more!

But what renders it almost incredible that any man could soberly submit such a proposition and dare to call it a compromise, is this: All that part of New Mexico which Texas claims, and which lies between the parallels of 36° 30′ and 42°, is, by the Resolutions of Annexation, to be forever free. I shall consider the constitutionality of these resolutions by and by; I now treat them as valid. Now the compromise proposes to buy this territory, so secured to freedom, and annex it to New Mexico, which is to be left open to slavery. We are to peril all the broad region between 36° 30′ and 42°, and pay Texas some six or eight millions of dollars for the privilege of doing so! Mr. Clay is not less eminent for his statesmanship than for his waggery. Were he to succeed in playing off this practical joke upon the North, and were it not for the horrible consequences which it would involve, a roar of laughter, like a *feu de joie*, would run down the course of the ages. As it is, the laughter will be "Elsewhere."

The next point pertains to the abolition of the slave trade, and the perpetuity of slavery in the District of Columbia. This District has an area of about fifty square miles; and Mr. Clay proposes, in consideration of transferring its slave marts to Alexandria, on the Virginia side, or to some convenient place in Montgomery or Prince George's county, on the Maryland side, to divest Congress forever of its right of "exclusive legislation" over it. Should this plan prevail, the perpetuity of slavery in the District will be defended by more unassailable and impregnable barriers than any other institution in Christendom. The President has a veto upon Congress; but two-thirds of both houses may still pass any law, notwithstanding his dissent. Mr. Clay proposes to give, both to Maryland and to the citizens of the District, a veto on this subject;—an absolute veto, not a qualified one, like that of the President of the United States, but one that will control, not majorities merely, but an absolute unanimity in both branches of Congress. By his plan, therefore, three separate, independent powers are to have a veto upon the abolition of slavery in the District of Columbia. And not only

so, but while it will require their *joint* or *concurrent* action to abolish the institution, any one of them can preserve it. The laws of the Medes and Persians had no such guaranties for perpetuity as this.

Mr. Clay's last point is really too facetious. So solemn a subject does not permit such long-continued levity, however it may be masked by sobriety of countenance. It is that Congress shall make mere effectual provision for the capture and delivery of fugitive slaves; and, as an equivalent for this, it shall bind itself never to interfere with the inter-State traffic in slaves. We are to catch their slaves, and, as though that were a grateful privilege to us, we are to allow them free commerce in slaves, coastwise or inland. By this means, slaves can be transported to the mouth of the Rio Grande, and some hundreds of miles up that river, towards New Mexico, instead of being driven in coffles across the country. The compromise is, that for every slave we catch, we are to facilitate the passage of a hundred into New Mexico.

Such is the mutuality of Mr. Clay's compromises. They are such compromises as the wolf offers to the lamb, or the vulture to the dove. They make the rightful admission of California into the Union, with her free Constitution, contingent upon opening the new Territories to slavery; they ratify one part of the predatory claim of Texas, and propose to give her millions for the other part; they give an unconditional veto to the State of Maryland and to the citizens of the District of Columbia, over a unanimous vote of both Houses of Congress, even when approved by the President; in connection with Mr. Butler's bill and Mr. Mason's amendments, they expose our white citizens to grievous penalties and imprisonments for not doing what the Supreme Court of the United States has decided we are not bound to do, in relation to fugitive slaves, and they offer our colored citizens to be kidnapped and spirited away into bondage; and they foreclose, in favor of the South, the disputed question of the inter-State commerce in slaves. In one particular only do they appear to concede anything to Northern rights, or Northern convictions, or Northern feelings. They propose to transfer the District of Columbia slave trade across an ideal line into Virginia or into Maryland, so that the slave planter or slave trader, when he comes to our American Congo to replenish his stock of human cattle, shall be obliged to go a mile or two, to the slave marts, instead of walking down Pennsylvania avenue. I deem this to be no concession. If it is honorable to produce corn and cotton, it is honorable to buy and sell them,—and if it is honorable to hold beings created in God's image in slavery, it is honorable to stand between the producer and consumer, and to make merchandise of the bodies and the souls of men. Let this Light of the Age be set upon a hill that all nations may behold it.

I will refer to Mr. Bell's resolutions no further than to say that they propose the formation of three slave States out of what is now claimed by Texas, one of which is to be admitted into the Union forthwith as an offset to California.

Mr. Buchanan has not regarded the movements of his rival, General Cass, with indifference. He has spent a considerable portion of the winter in Washington, and it is understood that he holds out the Missouri Compromise line, from the western boundary of Missouri to the Pacific ocean, as his lure to the South, for their favorable regards in the ensuing Presidential contest.

In a chronological order, I must now consider some vitally important views, which have been submitted by some members in the House, and by Mr. Webster and others in the Senate. In mentioning the name of this great statesman, and in avowing that I am one among the many whom his recently expressed opinions have failed to convince, it is due to myself, however indifferent it may be to him or to his friends, that I should express my admiration of his powers, my gratitude for his past services, and the diffidence with which I dissented, at first, from his views. But I have pondered upon them long, and the longer I have pondered, the more questionable they appear. I shall therefore venture upon the perilous task of inquiring into their correctness; and while I do it with the deference and respect which belong to his character, I shall do it also with that fidelity to conscience and to judgment that belong to mine. He is great, but truth is greater than us all.

I shall confine myself mainly, and perhaps wholly, to Mr. Webster's views, because he has argued the cause of the South with vastly more ability than it has been argued by any one among themselves. If his conclusions, then, be not tenable, their case is lost.*

Mr. Webster casts away the "Proviso" altogether. He says: "*If a resolution or a law were now before us to provide a Territorial Government for New Mexico, I would not vote to put any prohibition into it whatever.*"—*Page* 44. The reason given is, that slavery is already excluded from "California and New Mexico" "by the law of nature, of physical geography, the law of the formation of the earth."—*Page* 42. "California and New Mexico are Asiatic in their formation and scenery. They are composed of vast ridges of mountains of enormous height, with broken ridges and deep valleys."—*Page* 43.

Now, this is drawing moral conclusions from physical premises. It is arguing from physics to metaphysics. It is determining the law of the spirit by geographical phenomena. It is undertaking to settle by mountains and rivers, and not by the Ten Commandments, a great question of human duty. It abandons the second commandment of Christ and all Bills of Rights enacted in conformity thereto, and leaves our obligations to our "neighbor" to be determined by the accidents of earth and water and air. To ascertain whether a people will obey the Divine command, and do to others as they would be done by, it looks at the thermometer. What a problem would this be? "Required the height above the level of the

* All my quotations from Mr Webster are taken from the edition of his speech which he dedicated to the "People of Massachusetts," March 18, 1850. Among the numerous readings which have appeared, I suppose this to be the most authentic.

sea at which the oppressor 'will undo the heavy burdens and let the oppressed go free, and break every yoke,'—to be determined barometrically." Alas! this cannot be done. Slavery depends, not upon Climate, but upon Conscience. Wherever the wicked passions of the human heart can go, there slavery can go. Slavery is an effect. Avarice, sloth, pride, and the love of domination, are its cause. In ascending mountain sides, at what altitude do men leave these passions behind them? Different vegetable growths are to be found at different heights, depending also upon the zone. This I can understand. There is the altitude of the palm, the altitude of the oak, the altitude of the pine, and, far above them all, the line of perpetual snow. But, in regard to innocence and guilt, where is the *white line?* How high up can a slaveholder go and not lose his free agency? At what elevation will the whip fall from the hand of the master, and the fetter from the limbs of the slave? There is no such point. Freedom and slavery on the one hand, and climate and geology on the other, are incommensurable quantities. We might as well attempt to determine a question in theology by the cube root, or a question in ethics by the Black Art. Slavery being a crime founded upon human passions can go wherever those passions are unrestrained. It has existed in Asia from the earliest ages, notwithstanding its "formation and scenery." It labors and groans on the flanks of the Ural mountains now. There are to-day forty-eight millions of slaves in Russia, not one rood of which comes down so low as the northern boundary of California and New Mexico.

Had Mr. Webster's philosophy been correct, then California was at superfluous pains when she incorporated the Ordinance of 1787 into her Constitution. Instead of saying that "slavery and involuntary servitude, (except for crime,) shall be forever prohibited," she should have said, "Whereas by a law of nature, of physical geography, the law of the formation of the earth," "slavery cannot exist in California," therefore we will not "re-affirm an ordinance of Nature, nor re-enact the will of God."

Should it be said that slavery will not go into the new Territories, because it is unprofitable, I ask, where is it profitable? Where is ignorance so profitable as knowledge? Where is ungodliness gain, even for the things of this life? How little is the hand worth at one end of an arm, if there is not a brain at the other? Do not Maryland, Virginia, North Carolina, and other States, furnish witnesses by thousands and tens of thousands that slavery impoverishes? Yet with what enthusiasm they cherish it. Generally, ignorance is a necessary concomitant of slavery. Of white persons, over twenty years of age, unable to read and write, there were, according to the last census, 58,787 in Virginia, 56,609 in North Carolina, 58 513 in Tennessee, and so forth. I have a letter before me, received this morning, dated in Indiana, in which the writer says he removed from North Carolina, in 1802, when he was fourteen years old, and at that time he had never seen a newspaper in his life. Can there be genius, the inventive talent, or profitable labor, where ignorance is so dense? Can the oppression that tramples out voluntary industry, intelligence, enterprise, and the desire of independence, conduce to riches? Yet this is done wherever slavery exists, and is part and parcel of its working. Is any other form of robbery profitable? Yet individuals and communities have practiced it and lived by it, and we may as well rely upon a "law of physical geography" to arrest the one at the other. It is not poetry, but literal truth, that the breath of the slave blasts vegetation, his tears poison the earth, and his groans strike it with sterility. It would be easy to show why the master does not abandon slavery, even amid the desolation with which it has surrounded him. There is a combination of poverty and pride, which slavery produces, *on the doctrine of natural appetence*, and which, therefore, it exactly fits. The helplessness of the master in regard to all personal wants seems to necessitate the slavery that has begotten it. All moral and religious principles are lowered till they conform to the daily practice. Custom blinds conscience, until, without any attempt to emancipate or ameliorate their victims, men can preach and pray and hold slaves, as Hamlet's grave-digger jests and sings while he turns up skulls.

But slavery cannot go into California or New Mexico, because their staple productions are not "tobacco, corn, cotton, or rice."—*Page* 44. These are agricultural products. But is slave labor confined to agriculture? Suppose that predial slavery will not become common in the new Territories. Cannot menial? If slaves cannot do field-work, cannot they do house-work? There is an opening for a hundred thousand slaves to-day in the new Territories, for purposes of domestic labor. And beyond this, let me ask, who possesses any such geologic vision that, at a distance of a thousand miles, he can penetrate the valleys and gorges of New Mexico, and say that gold will not yet be found there as it is in California,—not in sand and gravel only, but in forty-eight pounders and in fifty-sixes? This is the very kind of labor on which slaves, in all time, have been so extensively employed,—the very labor on which a million of slaves in Hispaniola lost their lives, within a few years after its discovery by Columbus. Gold deposites are now worked within twenty-five miles of Santa Fe. The last account which I have seen, of a company of emigrants passing from Santa Fe to California by the river Gila, announces rich discoveries of gold upon that river. A fellow-citizen of mine has just returned home, who says he saw a slave sold at the mines in California, in September last. As yet, the distant regions of the Gila and the Colorado cannot be worked, because of the Apaches, the Utahs, and other tribes of Indians. But admit slavery there, and the power of the Government will be invoked to exterminate these Indians, as it was before to exterminate the Cherokees and Seminoles,—not to drive them beyond the Mississippi, but beyond the Styx. A few days since a letter was published in the papers, dated on board a steamer descending the Mississippi, which stated that a considerable number of slaves were on board, bound for California, under an agreement

with their masters that they should be free after serving two years at the mines. We know, too, that the reason assigned for incorporating a provision in the Constitution of California, authorizing its Legislature to pass laws for the exclusion of free blacks from the State, was, that slaves would be brought there under this very form of agreement, and, by and by, the country would be overspread by people of color who had bought their freedom. The sagacious men who framed the California Constitution came from all parts of the territory, and, being collected on the spot, having surveyed all its mountains, having breathed its air at all temperatures, and turned up its golden soil,—these men had never discovered any "law of physical geography" which the fell spirit of slavery could not transgress. Slaves were carried into Oregon, ten degrees of latitude higher up. Its colonists reënacted the Ordinance of 1787 before Congress gave them a Territorial Government. In the Territorial Government that was given them, the prohibition was inserted; and President Polk signed the bill, with an express protest, that he ratified this exclusion of slavery only because the country lay north of the Missouri Compromise line; but declared that, had it embraced the very region in question, he would have vetoed the bill.

General Cass never took the ground that slavery could not exist in the new territories; and no inconsiderable part of the opposition made to him in Massachusetts and in other free States, was placed expressly upon the ground that he would not prohibit it. Mr. Webster, in his Marshfield speech, Sept. 1, 1848, opposed the election of General Cass, because, through his recreancy to Northern principles, slavery would invade the territories. This was expressed with his usual clearness and force, as follows:

"He, [General Cass,] will surely have the Senate; and with the patronage of the Government, with every interest that he, as a Northern man, can bring to bear, coöperating with every interest that the South can bring to bear, we cry safety before we are out of the woods, *if we feel that there is no danger as to these new territories.*"*

Yet Mr. Webster now says that to support the "Proviso," would "do disgrace to his own understanding."—*Page* 46.

During the same campaign, also, the Honorable Rufus Choate, one of the most eloquent men in

* On the eleventh of June last, General Cass, in the Senate, referred to this notice of himself. He affirmed that he *had* taken the ground, in his "Nicholson" Letter, "*that slavery could not exist in the new Territories;*" but with his usual fatality of self-contradiction, he proceeded to read some passages which confirmed the truth of my statement, and convicted himself. Everybody knows that all the great parties in the country entertained the same opinion respecting Gen. Cass's views that I did; for he was opposed at the North and advocated at the South, on the express ground that he would allow slavery to go into the new Territories. Nobody had then heard of any insuperable barriers erected by God and Nature against the encroachments of slavery in that direction. That fable had not then been invented.

In General Cass's reference to me, in the above-mentioned speech, there are many curious things. He arraigns me for referring to him; but he remembers to forget, that in a long *parvum in multo* speech which he made last January, he first assailed me. He puts on a sanctimonious face, and reads me a lecture for citing the Scriptures; while, in the very speech which contains the censure, he cites the Scriptures six times, in the same way as I did once. Is there any canon of the Church which forbids my referring to the Scripture, but allows it to a seeker for the Presidency?

But his theological knowledge is the most extraordinary. In referring to the ninth Commandment, about bearing false witness against one's neighbor, he came only within six of it; for he called it the "third" I hope, for the credit of the country, some friend will help him to correct this before it goes into our documentary history; and, in the mean time, I commend him to the Sunday School Society.

But the General nowhere explains his own sad political condition. In his little-in-much speech delivered in January last, he most solemnly maintained that Congress had no power under the Constitution to legislate for the inhabitants of the Territories. Yet, during the great part of his political life, he was the mere creature of such legislation. As such, he filled offices, which, according to the doctrines of that speech, were usurpations, received salaries, which were embezzlements, and took oaths to support the Constitution, which were little better than perjuries. But since the speech of January was made in which he denied all power in Congress to legislate for the inhabitants of the Territories, and affirmed this right to be in the inhabitants themselves, he has accepted a place on the Compromise Committee, and joined in the Compromise report, by which according to his own doctrine, he usurps this power of legislation, and robs the Territorial inhabitants of what he had so lately averred to be their natural right. The bill, however, confers a limited and *quasi* power of legislation on the inhabitants; yet, on the most important of all subjects, the subject of slavery, it denies them all power, and fetters them immovably.

This, then, is General Cass's course on this subject. He denied the power of Congress to legislate for the inhabitants of the Territories, so that he might please the South by voting against, or vetoing the Proviso, and thus allow the extension of slavery. But when, in the course of events, it was apprehended that the Territories would of themselves exclude slavery, if allowed to do what he said they had a natural, inherent right to do, then he denies his denial by going for a Compromise Committee and for the Compromise bill. But thirdly, lest the Territories, if invested with the common power of legislating for themselves in their domestic concerns, shou'd of themselees prohibit slavery, he denies his denied denial, and takes this chiefest prerogative of freemen out of their hands

In his last speech, General Cass deems it not unworthy his Senatorial dignity to pun upon my name A pun has been called "the smallest kind of wit," and I think the General has here produced the smallest specimens of the "smallest kind." Did it not occur to the General that his own name offers the most grievous temptation for punning?

As a general rule, I contemn punning As a malignant *attack* upon any gentleman for the accident of his name, it is wholly unpardonable It is but barely just fiable as a *retort*. To warn the General of the dangers he encounters by indulging his love of punning I will venture to subjoin a specimen or two, of what might be easily and indefinitely extended:

1. PHILOLOGICALLY.

Small odds, 'twixt tweedle dum and tweedle-dee,
And Cass means much the same, without the C.

2. NUMERICALLY.

This Ass is very big. Then call him CAss;
C's Roman for 100;—a hundred times an Ass.

3. CHEMICALLY.

The prophet boldly saith, "All flesh is grass;"
But thistle-eating donkey's flesh is Cass;—
Cass is a *Carbonate* whose *base* is Ass.

While General Cass held Territorial offices, he became renowned for the enormous quantities of rations he consumed. I have forgotten whether the number was such as to be represented by the Roman numeral L or C,—the initial of his first or of his last name. If the latter, it would suggest the following:

4. GASTRONOMICALLY.

Greedier than he that starved 'twixt stacks of hay,—
An honest ass;
Our Jask devours C rations every day:
Hence y-clept CAss.

I might thus carry the General through all the arts and scienc s; but if he is now disposed to say "quits," on the score of punning, I am; and will draw no more upon the *asinine* or *Cassinine* associations which his name suggests.

New England, and known to be the personal friend of Mr. Webster, delivered a speech at Salem, in which the following passage occurs:

"It is the passage of a law to say that California and New Mexico shall remain forever free. That is, fellow-citizens, undoubtedly an object of great and transcendent importance; for there is none who will deny that we should go up to the very limits of the Constitution itself, and with the wisdom of the wisest, and zeal of the most zealous, should unite to accomplish this great object, and to defeat the always detested, and forever to be detested object of the dark ambition of that candidate of the Baltimore Convention, who has ventured to pledge himself in advance that he will veto the future law of freedom; and may God avert the madness of all those who hate slavery and love freedom, that would unite in putting him in the place where his thrice accursed pledge may be redeemed! * * * * Is there a Whig upon this floor who doubts that the strength of the Whig party next March will insure freedom to California and New Mexico, if by the Constitution they are entitled to freedom at all? Is there a member of Congress that would not vote for freedom? You know there is not one. Did not every Whig member of Congress from the free States vote at the last session for freedom? You know that every man of them returned home covered with the thanks of his constituents for that vote. Is there a single Whig constituency, in any free State in this country, that would return any man that would not vote for freedom? *Do you believe that Daniel Webster himself could be returned if there was the least doubt upon the question?*"

Mr. Choate then adds: "Upon this question alone, we always differ from those Whigs of the South; and on that one, we *propose simply to vote them down.*" Mr. Webster now says he will not join in voting them down.

Under such circumstances is it frivolous or captious to ask for something more than a dogmatic assertion that slavery cannot impregnate these new regions, and cause them to breed monsters forever? On a subject of such infinite importance I cannot be satisfied with a dictum; I want a demonstration. I cannot accept the prophecy without inquiring what spirit inspired the prophet. As a revelation from heaven it would be most delightful; but, as it conflicts with all human experience, it requires at least one undoubted miracle to attest the divinity of its origin.

According to the last census, there were more than eight thousand persons of African blood in Massachusetts. Abolish the moral and religious convictions of our people, let slavery appear to be in their sight not only lawful and creditable, but desirable as a badge of aristocratic distinction, and as a "political, social, moral and religious blessing," and what obstacle would prevent these eight thousand persons from being turned into slaves, on any day, by the easy, cheap, and short-hand kidnapping of a legislative act? Africans can exist here, for the best of all reasons,—they do exist here. A state of slavery would not stop their respiration, nor cause them to vanish "into thin air." Think, for a moment, of the complaints we constantly hear in certain circles, of the difficulty and vexatiousness of commanding domestic service. If no moral or religious objection existed against holding slaves, would not many of those respectable and opulent gentlemen who signed the letter of thanks to Mr. Webster, and hundreds of others indeed, instead of applying to intelligence offices, or visiting emigrant ships for domestics, as we call them, go at once to the auction-room and buy a man or a woman with as little hesitancy or compunction as they now send to Brighton for beeves, or go to Tattersall's for a horse? If the cold of the higher latitudes checks the flow of African blood, or benumbs African limbs, the slaveholder knows very well that a trifling extra expense for whips will make up for the difference.

But suppose a doubt could be reasonably entertained about the invasion of the new territories by slavery. Even suppose the chances to preponderate against it. What then? Are we to submit a question of human liberty over vast regions and for an indefinite extent of time, to the determination of chance? With all my faculties I say *No!* Let me ask any man, let me respectfully ask Mr. Webster himself, if it were his own father and mother, and brothers and sisters, and sons and daughters, who were in peril of such a fate, whether he would abandon them to chance,—even to a favorable chance. Would he suffer their fate to be determined by dice or divination, when positive prohibition was in his power? And by what rule of Christian morality, or even of enlightened heathen morality, can we deal differently with the kindred of others from what we would with our own? He is not a Christian whose humanity is bounded by the legal degrees of blood, or by general types of feature.

But Mr. Webster would not "taunt" the South. Neither would I. I would not taunt any honorable man, much less a criminal. Still, when the most precious interests of humanity are in peril, I would not be timid. I would not stop too long to cull lover's phrases. Standing under the eye of God, in the forum of the world and before the august tribunal of posterity, when the litigants are Freedom and Tyranny, and human happiness and human misery the prize they contest, it should happen to the sworn advocate of Liberty, as Quintilian says it did to Isocrates, "not to speak and to plead, but to thunder and to lighten." Mr. Webster would not taunt the South; and yet I say the South were never so insulted before as he has insulted them. Common scoffs, jeers, vilifications, are flattery and sycophancy, compared with the indignities he heaped upon them. Look at the facts. The South waged war with Mexico from one and only one motive; for one and only one object,—the extension of slavery. They refused peace unless it surrendered territory. That territory must be south of the abhorred line of 36° 30′. The same President who abandoned the broad belt of country on our Northern frontier, from 49° to 54° 40′, to which we had, in his own words, "an unquestionable title," would allow no prohibition of slavery to be imposed upon the territory which Mexico ceded, though she would bury it a foot deep in gold. The Proviso had been resisted in all forms, from the beginning. Southern Whigs

voted against the ratification of the treaty, foreseeing the struggle that was to follow. Desperate efforts were made to smuggle in an unrestricted territorial government, against all parliamentary rule and all constitutional implication. The whole South, as one man, claimed it as a "describable, weighable, estimable, tangible" and most valuable "right" to carry slaves there. Calhoun, Berrien, Badger, Mason, Davis,—the whole Southern phalanx, Whig and Democrat, pleaded for it, argued for it, and most of them declared themselves ready to fight for it; and yet Mr. Webster rises in his place, and tells them they are all moon-struck, hallucinated, fatuous; because "an ordinance of Nature and the will of God" had settled this question from the beginning of the world. Mr. Calhoun said, immediately after this speech, Give us free scope and time enough, and we will take care of the rest.

Mr. Mason said—

"We have heard here from various quarters, and from high quarters, and repeated on all hands,—repeated here again to-day by the honorable Senator from Illinois, [Mr. Shields,] that there is a law of nature which excludes the Southern people from every portion of the State of California. I know of no such law of nature,—none whatever; but I do know the contrary, that if California had been organized with a territorial form of government only, and for which, at the last two sessions of Congress, she has obtained the entire Southern vote, the people of the Southern States would have gone there freely, and have taken their slaves there in great numbers. They would have done so because the value of the labor of that class would have been augmented to them many hundred fold. Why, in the debates which took place in the convention in California which formed the Constitution, and which any Senator can now read for himself, after the provision excluding slavery was agreed upon, it was proposed to prohibit the African race altogether, free as well as bond. A debate arose upon it; and the ground was distinctly taken, as shown in those debates, that if the entire African race was not excluded, their labor would be found so valuable that the owners of slaves would bring them there, even though slavery were prohibited, under a contract to manumit them in two or three years. And it required very little reasoning, on the part of those opposed to this class of population, to show that the productiveness of their labor would be such as to cause that result. An estimate was gone into with reference to the value of the labor of this class of people, showing that it would be increased to such an extent in the mines of California, that they could not be kept out. It was agreed that the labor of a slave in any one of the States from which they would be taken, was not worth more than one hundred or one hundred and fifty dollars a year, and that in California it would be worth from four to six thousand dollars. They would work themselves free in one or two years, and thus the country would be filled by a class of free blacks, and their former owners have an excellent bargain in taking them there."

Yet Mr. Webster stands up before all this array, and says: "Gentlemen, you are beside yourselves. You have eaten hellebore. You would look more in character should you put on the 'cap and bells.' In sober sense, in seeing his object clearly and in pursuing it directly, Don Quixote was Doctor Franklin, compared with *you*. The dog in the fable, who dropped his meat to snap at its shadow, is no allegory in your case. I see two classes around me,—wise men and fools; *you* do not belong to the former. The Chancellor who keeps the king's idiots should have custody of you." Such is a faithful abstract of what Mr. Webster said to Southern Senators, and, through them, to all the South.

Here certainly was a reflection upon the understanding and intelligence of the South, such as never was cast upon them before. But the balm went with the sting. They bore the affront to their judgments, because it was so grateful to their politics and pockets. I think it no injustice to those Senators to say, that they would have nearly torn Mr. Webster in pieces for such a collective insult, if it had not promised to add fifty per cent. to their individual property, and to secure and perpetuate their political ascendency.

To help our conceptions in regard to Mr. Webster's course on this subject, let us imagine a parallel case,—or, rather, an approximate one, for there can be no parallel. Suppose a contest between the North and the South, on the subject of the Tariff, to have been raging for years. The sober blood of the North is heated to the fever point. The newspapers treat of nothing else. Public meetings and private conversations discuss no other theme. Hundreds of delegates wait upon Congress to add, if it be but a feather's weight, to the scale which holds their interests. Petitions flow in in thousands and tens of thousands. It is announced that Mr. Calhoun will pour out his great mind on the subject. Expectation is on tiptoe. All eyes, from all sides of the country, are turned towards Washington, as the Muezzin's to Mecca. The Senate chamber is packed, and the illustrious Senator rises. After an historic sketch of existing difficulties, after reading from the speeches which he made in 1832 and in 1846, he proceeds to say that he withdraws all opposition to a tariff,—to any tariff! He will not offend the delicate nerves of Northern manufacturers by further hostility. Were a bill then before him, he would not oppose it. "Take the schedules," says he, scornfully, to Northern Senators, "and fill up the blanks from A to Z with what percentages you please. For *ad valorem* rates, put in minimums and maximums at your pleasure. I will 'taunt' you no longer. I am for peace and the glorious Union. I have discovered an irrepealable and irreversible law of nature, which overrules all the devices of men. You cannot make one yard of woollens or cottons in New England. There, water has no gravity, steam has no force, and wheels will not revolve. In Vermont and New York, wool will not grow on sheeps' backs. I have penetrated the geology of Pennsylvania, and through all its stratifications, there is not a thimble-full of coal, nor an ounce of iron ore; and, if there were, combustion would not

help to forge it; for oxygen and carbon are divorced. As Massachusetts contributed one-third of the men and one-third of the money, to carry on the Revolutionary War, I am willing to compensate her for her lost blood and treasure, to the amount of hundreds of millions of dollars, with which she may fertilize the barrenness of her genius, and indulge her insane love for churches and schools." Had the great Southern Senator spoken thus, I think that even idolatrous, man-worshipping South Carolina,—a State which Mr. Calhoun has ruled and moved for the last twenty-five years, as a puppet-showman plays Punch and Judy,—would have sent forth, through all her organs, a voice of unanimous dissent.

As much as Freedom is higher than Tariff, so much stronger than their dissent should be ours.

Mr. Webster's averment that he would not "re-affirm an ordinance of Nature, nor reënact the will of God," [p. 44,] has been commented on more pungently than I am able or willing to do. It has been said that all law and all volition must be in harmony with the will of the Good Spirit or with that of the Evil One; and if we will not reënact the will of the former, then, either all legislation ceases, or we must register the decrees of the latter. But one important and pertinent consideration belongs to this subject, which I have nowhere seen developed. It is this: Endless doubts and contradictions exist among men, as to what is the will of God; and on no subject is there a wider diversity of opinion than on this very subject of slavery. Whose law was reënacted by the Ordinance of 1787? whose, when the African slave trade was prohibited? whose, when it was declared piracy? True, it is useless to put upon our statute-books an astronomical law, regulating sunrise, or high tides; but that is physical and beyond the jurisdiction of man, while slavery belongs to morals, and is within the jurisdiction of man. Cease to transcribe upon the statute-book what our wisest and best men believe to be the will of God in regard to our wordly affairs, and the passions which we think appropriate to devils will soon take possession of society. In regard to slavery, piracy, and so forth, there are multitudes of men, whose fear of the penal sanctions of another life is very much aided by a little salutary fine and imprisonment in this. Look at that noble array of principles which is contained in the Declaration of Rights in the Constitution of Massachusetts. Is it not a most grand and beautiful exposition of "the will of God,"—a transcript, as it were, from the Book of Life? So of the amendments to the Constitution of the United States. Yet our fathers thought it no tampering with holy things to enact them; and, in times of struggle and peril, they have been to many a tempted man as an anchor to the soul, sure and steadfast.

I approach Mr. Webster's treatment of the Texas question with no ordinary anxiety. Having been accustomed from my very boyhood to regard him as the almost infallible expounder of constitutional law, it is impossible to describe the struggle, the revulsion of mind, with which I have passed from an instructed and joyous acquiescence in his former opinions to unhesitating dissent from his present ones.

I must premise that I cannot see any necessary or beneficial connection between the subject of new Texan States and the admission of California and the government of the Territories. The former refers to some indefinite future, when, from its fruitful womb of slavery, Texas shall seek to cast forth an untimely birth. In this excited state of the country, at this critical juncture of our affairs, when there is sober talk of massacring a majority of the House of Representatives on their own floor, and a Senator, instead of threatening to hang a brother Senator on the highest tree, provided he could catch him in his own State, now draws a revolver of six barrels on another brother Senator, on the floor of the Senate, in mid-session; at such a time, I say, when, however few Abels there may be at work in the political field, there are Cains more than enough, would it not have been well to have acted upon the precept, "Sufficient unto the day is the evil thereof?"

As the basis of his argument, Mr. Webster quotes the following resolution:

"New States of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of the said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said territory lying south of 36 deg. 30 min. north latitude, commonly known as the Missouri Compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire; and in such State or States as shall be formed out of said territory north of said Missouri Compromise line, slavery or involuntary servitude (except for crime) shall be prohibited."

Note here, first, that only "*four*" States are to be admitted in "addition to said State of Texas;" and second, that "such State or *States*" (in the plural) as shall be formed from territory north of 36° 30′, *shall be free*. If *two*, or only *one* free State is to exist on the *north* side of the line, then how many will be left for the *south* side? I should expose myself to ridicule were I to set it down arithmetically, *four* minus *one*, equal to *three*. Yet Mr. Webster says "the guaranty is, that new States shall be made out of it, [the Texan territory,] and that such States as are formed out of that portion of Texas lying south of 36° 30′, may come in as slave States, to *the number of* FOUR, in addition to the State then in existence, and admitted at that time by these resolutions."—*Page* 29.

Here Mr. Webster gives outright to the South and to slavery, one more State than was contracted for,—assuming the contract to be valid. He makes a donation, a gratuity, of an entire slave State, larger than many a European principality. He transfers a whole State, with all its beating hearts, present and future, with all its infinite susceptibilities of weal and woe, from the side of freedom to that of slavery, in the leger-book of humanity. What a bridal gift for the harlot of bondage!

Was not the bargain hard enough, according to its terms? Must we fulfil it, and go beyond it? Is a slave State, which dooms our brethren of the human race, perhaps interminably, to the vassal's fate, so insignificant a trifle, that it may be flung in, as small change on the settlement of an ac-

count? Has the South been so generous a co-partner, as to deserve this distinguished token of our gratitude?

Why, by parity of reasoning, could he not have claimed all the four States, "in addition to said State of Texas," as free States? The resolutions divide the territory into two parts, one north and one south of the line of 36° 30′. Could not Mr. Webster have claimed the four States for Freedom with as sound logic, and with far better humanity than he surrendered them to Slavery? When Texas and the South have got their slave States "*to the number of four*" into the Union, whence are we to obtain our one or more free States? The contract will have been executed, and the consent of Texas for another State will be withheld.

Notwithstanding all this, Mr. Webster affirms the right of slavery to four more States, in the following words: "I know no form of legislation which can strengthen this. I know no mode of recognition that can add a tittle of weight to it." Catching the tone of his asseveration, I respond that I know no form of statement, nor process of reasoning, which can make it more clear, that this is an absolute and wanton surrender of the rights of the North and the rights of humanity.

But I hold the Texan resolutions to have been utterly void; and proceed to give the reasons for my opinion.

I begin by quoting Mr. Webster against himself. In an Address to the people of the United States, from the Massachusetts Anti-Texas State Convention, January 29th, 1845, the subjoined passage, which is understood, or rather, I may say, is now well known, to have been dictated by Mr. Webster himself, may be found:

"But we desire not to be misunderstood. According to our convictions, there is no power in any branch of the Government, or all its branches, to annex foreign territory to this Union. We have made the foregoing remarks only to show, that, if any fair construction could show such a power to exist anywhere, or to be exercised in any form, yet the manner of its exercise now proposed is *destitute of all decent semblance of constitutional propriety*."

Thus cancelling the authority of Mr. Webster in 1850 by the authority of Mr. Webster in 1845, I proceed with the argument.

Though the annexation of Texas was in pursuance of a void stipulation, yet it is a clear principle of law that when a contract void between the parties, has been *executed* by them, it cannot then be annulled. If executed, it becomes valid, not by virtue of the contract, but by virtue of the execution. I bow to this legal principle, and would fulfil it. But any independent stipulation which remains unexecuted, remains invalid. Such is that part of the annexation resolutions which provides for the admission of a brood of Texan States. The resolutions themselves say, in express terms, that the new States are to be admitted "under the provisions of the Federal Constitution;" and the Constitution says, "New States may be admitted *by the Congress* into this Union." By what Congress? Plainly, by the Congress in session at the time when application for admission is made; and by no other. The fourth Texan State may not be ready for admission for fifty years to come; and could the Congress of 1845 bind the Congress of 1900? The Congress of 1900 and all future Congresess, will derive their authority from the Constitution of the United States, and not from any preceding Congress. Put the case in a negative form. Could the Congress of 1845 bind all future Congresses *not* to admit new States, and thus, *pro tanto*, annul the Constitution? Positive or negative, the result is the same. No previous Congress, on such a subject, can enlarge or limit the power of a subsequent one. Whenever, therefore, the question of a new Texan State comes up for consideration, the Congress *then in being* must decide it on its own merits, untrammeled by anything their predecessors have done; and, especially, free from a law which, while similar in spirit, is a thousand times more odious in principle than statutes of mortmain.

Admitting that a future Congress, on such a subject, might be bound by a *treaty*, I answer that there was no treaty; while the fact that a treaty clause was introduced into the resolutions, in the Senate, for the sake of obtaining certain votes that would never otherwise have been given in their favor, and under an express pledge from the Executive that the method by treaty should be adopted, which pledge was forthwith iniquitously broken, leaves no element of baseness and fraud by which this proceeding was not contaminated. In the name of the Constitution, then, and of justice, let every honest man denounce those resolutions as void alike in the forum of law and in the forum of conscience; and, admitting Texas herself to be in the Union, yet, when application is made for any new State from that territory, let the question be decided upon the merits it may then possess.

And was not Mr. Webster of the same opinion, when, in Faneuil Hall, in November, 1845, after the Resolutions of Annexation had passed, he made the following emphatic, but unprophetic, declaration:

"It is thought, it is an idea I do not say how well founded, that there may yet be a hope for resistance to the consummation of the act of annexation. I can only say for one that *if it should fall to my lot to have a vote on such a question*, AND I VOTE FOR THE ADMISSION INTO THIS UNION OF ANY STATE WITH A CONSTITUTION WHICH PROHIBITS EVEN THE LEGISLATURE FROM EVER SETTING THE BONDMEN FREE, I SHALL NEVER SHOW MY HEAD AGAIN, DEPEND UPON IT, IN FANEUIL HALL."

There is another objection to any future claim of Texas to be divided into States, which grows out of her own neglect to fulfil the terms and spirit of the agreement. In the "territory north of the Missouri Compromise line, slavery or involuntary servitude, (except for crime,) shall be prohibited." So reads the bond. But if Texas suffers slavery to be extended over that part of her territory, then, when it becomes populous enough for admission, and is overspread with slavery, a new State may present a free Constitution, be admitted by Congress, and before the slaves have time to escape, or to carry the ques-

tion of freedom before the judicial tribunals, *Presto!* this free Constitution will be changed into a slave Constitution, under the alleged right of a State to decide upon its own domestic institutions, and thus the word of promise which was kept to the ear, will be broken to the hope. If Texas meant to abide by the resolutions of annexation, and to claim anything under them, it was her clear and imperative duty forthwith to pass a law, securing freedom to every inhabitant north of the Compromise line. In this way only can the resolutions be executed in their true spirit. That territory is now in the condition of an egg. It is undergoing incubation. From it a State is hereafter to be hatched; but before promising to accept the chick, it would be agreeable to know whether a viper had impregnated the egg.

But there is a still further objection, of whose soundness I have no doubt; but should I be in error in regard to it, the mistake will not invalidate any other argument. The parties to that agreement stipulated on the ground of mutuality, without which all contracts are void. Some States were to be admitted to strengthen the hands of slavery, and some of freedom. A line of demarcation was drawn. Now, on investigation, I believe it will most conclusively appear that there is not an inch of Texan territory north of the stipulated line. It all belongs to New Mexico, as much as Nantucket or Berkshire belongs to Massachusetts. It was a mistake on the part of the contracting parties; if, on the part of Texas, it was not something worse than a mistake. The mutuality, then, fails. The contract is *nudum pactum*. Texas can give nothing for what she was to receive; and is, therefore, entitled to receive nothing but what she has got.

In regard to "the business of seeing that fugitives are delivered up," Mr. Webster says: "My friend at the head of the Judiciary Committee, [Mr. Butler of South Carolina,] has a bill on the subject now before the Senate, with some amendments to it, which I propose to support, with all its provisions, to the fullest extent."

Here is Mr. Butler's bill, with Mr. Mason's amendments:

A BILL

To provide for the more effectual execution of the 3d clause of the 2d section of the 4th article of the Constitution of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when a person held to service or labor in any State or Territory of the United States, under the laws of such State or Territory, shall escape into any other of the said States or Territories, the person to whom such service or labor may be due, his or her agent or attorney, is hereby empowered to seize or arrest such fugitive from service or labor and take him or her before any judge of the circuit or district courts of the United States, or before any commissioner, or clerk of such courts, or marshal thereof, or any postmaster of the United States, or collector of the customs of the United States, residing or being within such State wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge, commissioner, clerk, marshal, postmaster, or collector, as the case may be, either by oral testimony or affidavit taken before and certified by any person authorized to administer an oath under the laws of the United States, or of any State, that the person so seized or arrested, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge, commissioner, clerk, marshal, postmaster, or collector, to give a certificate thereof to such claimant, his or her agent or attorney, which certificate shall be a sufficient warrant for taking and removing such fugitive from service or labor to the State or Territory from which he or she fled.

SEC. 2. *And be it further enacted*, That when a person held to service or labor, as mentioned in the first section of this act, shall escape from such service or labor, as therein mentioned, the person to whom such service or labor may be due, his or her agent or attorney, may apply to any one of the officers of the United States named in said section, other than a marshal of the United States, for a warrant to seize and arrest such fugitive, and upon affidavit being made before such officer, (each of whom for the purposes of this act is hereby authorized to administer an oath or affirmation,) by such claimant his or her agent, that such person does, under the laws of the State or Territory from which he or she fled, owe service or labor to such claimant, it shall be, and is hereby made, the duty of such officer, to and before whom such application and affidavit is made, to issue his warrant to any marshal of any of the courts of the United States to seize and arrest such alleged fugitive, and to bring him or her forthwith, or on a day to be named in such warrant, before the officer issuing such warrant, or either of the officers mentioned in said first section, except the marshal to whom the said warrant is directed, which said warrant or authority the said marshal is hereby authorized and directed in all things to obey.

SEC. 3. *And be it further enacted*, That upon affidavit made as aforesaid by the claimant of such fugitive his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession, before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent or attorney. And to this end, the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require. The said officer and his assistants, while so employed, to receive the same compensation and to be allowed the same expenses as are now allowed by law for transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the treasury of the United States: *Provided*, That, before such charges are incurred, the claimant, his agent or attorney, shall secure to said officer payment of the same, and in case no actual force be opposed, then they shall be paid by such claimant, his agent or attorney.

SEC. 4. *And be it further enacted*, When a warrant shall have been issued by any of the officers under the second section of this act, and there shall be no marshal or deputy marshal within ten miles of the place where such warrant is issued, it shall be the duty of the officer issuing the same, at the request of the claimant, his agent or attorney, to appoint some fit and discreet person, who shall be willing to act as marshal, for the purpose of executing said warrant; and such person so appointed shall, to the extent of executing said warrant, and detaining and transporting the fugitive named therein, have all the power and authority, and be, with his assistants, entitled to the same compensation and expenses provided in this act in cases where the services are performed by the marshals of the courts.

SEC. 5. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, or any person or persons assisting him, her, or them, in so serving or arresting such fugitive from service or labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared, or shall aid, abet, or assist such person so owing service or labor to escape from such claimant, his agent or attorney, or shall harbor or conceal such person, after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of one thousand dollars, which penalty may be recovered by and for the benefit of such claimant, by action of debt in any court proper to try the same, saving, moreover, to the person claiming such labor or service, his right of action for, on account of, the said injuries, or either of them.

SEC. 6. *And be it further enacted*, That when said person is seized or arrested, under and by virtue of the said warrant by such marshal, and is brought before either of the officers aforesaid, other than the said marshal, it shall be duty of such officer to proceed in the case of such person, in the same way as he is directed and authorized to do when such person is seized and arrested by the person claiming

him, or by his or her agent or attorney, and is brought before such officer under the provisions of the first section of this act.

AMENDMENTS

Intended to be proposed by Mr. Mason to the bill (S. 23) *to provide for the more effectual execution of the third clause of the second section of the fourth article of the Constitution of the United States*

At the end of section 5, add:

And any person or persons offending against the provisions of this section, to be moreover deemed guilty of a misdemeanor, or in obstructing the due execution of the laws of the United States, and upon conviction thereof shall be fined in the sum of one thousand dollars, one half whereof shall be to the use of the informer; and shall also be imprisoned for the term of twelve months.

At the end of section 6, add:

And in no trial or hearing under this act shall the testimony of such fugitive be admitted in evidence.

It will be observed that the first section of the bill, after constituting the judges of the courts, the seventeen thousand postmasters, the collectors, &c., as tribunals, *without appeal*, for the delivery of anybody, who is sworn by anybody, anywhere, to be a fugitive slave, refers to the beforementioned officers in the words "residing or being within such State where such seizure or arrest is made." That is, the judge, postmaster, collector, &c., need not be an inhabitant of the State, or hold his office in the State, where the seizure is made; but it is sufficient if he is such officer anywhere within the United States. Mr. Butler or Mr. Mason, therefore, may send the postmaster of his own city or village, into Massachusetts, with an agent or attorney, who brings his affidavit from South Carolina or Virginia, in his pocket; the agent or attorney may arrest anybody, at any time, carry him before his accomplice, go through with the judicial forms, and hurry him to the South; the officer, after his judicial functions are discharged, turning bailiff, protecting the prey and speeding the flight!

Still further; this bill derides the trial, by jury, secured by the Constitution. A man may not lose a horse without a right to this trial; but he may his freedom. Mr. Webster spoke for the South and for slavery; not for the North and for freedom, when he abandoned this right. Such an abandonment, it would be impossible to believe of one who has earned such fame as Defender of the Constitution; it would be more reasonable to suppose the existence of some strange misapprehension, had not Mr. Webster, with that precision and strength which are so peculiarly his own, declared his determination to support this hideous bill, "with all its provisions to the fullest extent," when, at the same moment, another bill, of which he took no notice, was pending before the Senate, introduced by Mr. Seward of New York, securing the invaluable privilege of a jury trial.

I disdain to avail myself, in a sober argument, of the popular sensitiveness on this subject; and I acknowledge my obligations to the Constitution while it is suffered to last. But still I say, that the man who can read this bill without having his blood boil in his veins, has a power of refrigeration that would cool the tropics.

I cannot doubt that Mr. Webster will yet see the necessity of reconsidering his position, on this whole question.

Mr. Webster says: "It is my firm opinion, this day, that within the last twenty years as much money has been collected and paid to the abolition societies, abolition presses, and abolition lecturers, as would purchase the freedom of every slave, man, woman, and child, in the State of Maryland, and send them all to Liberia."

The total number of slaves in Maryland, according to the last census, amounted to 89,405. At $250 apiece,—which is but about half the value commonly assigned to Southern slaves by Southern men,—this would be $22,373,750. Allowing $30 each for transportation to Liberia, without any provision for them after their arrival there, the whole sum would be $25,058,600—in round numbers twenty-five millions of dollars! more than a million and a quarter in each year, and about thirty-five hundred dollars per day. I had not supposed the abolitionists had such resources at their command.

I have dwelt thus long upon Mr. Webster's speech, because in connection with his two votes in favor of Mr. Foote's committee of compromise, which votes, had they been the other way, would have utterly defeated the committee, it is considered to have done more to jeopard the great cause of freedom in the territories, than any other event of this disastrous session. I have spoken of Mr. Webster by name, and, I trust, in none but respectful terms. I might have introduced other names, or examined his positions without mentioning him. I have taken what seemed to me the more manly course; and if these views should ever by chance fall under his eye, I believe he has magnanimity enough to respect me more for the frankness I have used. If I am wrong, I will not add to an error of judgment, the meanness of a clandestine attack. If I am right, no one can complain; for we must all bow before the majesty of Truth.

I have now noticed the principal events which have taken place in Congress, and which have led to what military men would call the "demoralization" of many of the rank and file of its members. Some recent movements have brought vividly to mind certain historical recollections in regard to the African slave trade, now execrated by all civilized nations. When the immortal Wilberforce exposed to public gaze the secrets of that horrid traffic, his biographer says, "The first burst of generous indignation promised nothing less than the instant abolition of the trade, but *mercantile* jealousy had taken the alarm, and the defenders of the West India system found themselves strengthened by the independent alliance of *commercial* men."—*Life of Wilberforce, vol. I, page* 291.

Again; opposition to Wilberforce's motion "arose amongst the Guinea *merchants*"—"reinforced, however, before long by the great body of West India planters."—*Ibid.*

The Corporation of Liverpool spent, first and last, upwards of £10,000 in defence of a traffic which even the gravity and calmness of judicial decisions have since pronounced "infernal."

"Besides printing works in defence of the slave trade and remunerating their authors; paying the expenses of delegates to attend in London

and watch Mr. Wilberforce's proceedings, they pensioned the widows of Norris and Green, and voted plate to Mr. Penny, for their exertions in this cause."—*Ibid., page* 345.

It is said that the Corporation of Liverpool, at this time, "believed firmly that the very existence of the city depended upon the continuance of the traffic." Look at Liverpool now, and reflect what greater rewards, even of a temporal nature, God reserves for men that abjure dishonesty and crime.

All collateral motives were brought to bear upon the subject, just as they are at the present time. The Guinea trade was defended "as a nursery for seamen."—*Ibid., page* 293.

Even as late as 1816, the same class of men, in the same country, opposed the abolition of "white slavery" in Algiers, from the same base motives of interest. It was thought that the danger of navigating the Mediterranean, caused by the Barbary corsairs, was advantageous to British commerce; because it might deter the merchant ships of other nations from visiting it. After Lord Exmouth had compelled the Algerines to liberate their European slaves, he proceeded against Tunis and Tripoli. In giving an account of what he had done, he defends his conduct "upon general principles," but adds, "as applying to our own country, [Great Britain,] it may not be borne out, *the old mercantile interest being against it.*"—*Osler's Life of Exmouth, page* 303.

So after Admiral Blake, in the time of Cromwell, had attacked Tunis, he says, in his despatch to Secretary Thurloe, "And now seeing it hath pleased God soe signally to justify us herein, I hope his highness will not be offended at it, nor any who regard duly the honor of the nation, *although I expect to have the clamors of* INTERESTED MEN."—*Thurloe's State Papers, Vol II, page* 390.

And is Commerce, the daughter of Freedom, thus forever to lift her parricidal hand against the parent that bore her? Are rich men forever to use their "thirty pieces of silver," or their "ten thousand pounds sterling," or their hundreds of thousands of dollars, to reward the Judases for betraying their Savior? Viewed by the light of our increased knowledge, and by our more elevated standard of duty, the extension of slavery into California or New Mexico, at the present time, or even the sufferance of it there, is a vastly greater crime than was the African slave trade itself, in the last century; and I would rather meet the doom of posterity, or of heaven, for being engaged in the traffic then, than for being accessary to its propagation now.

Let those who aid, abet, or connive at slavery extension now, as they read the damning sentence which history has awarded against the actors, abettors and connivers of the African trade, *but change the names*, and they will be reading of themselves. Should our new territories be hereafter filled with groaning bondmen, should they become an American Egypt, tyrannized over by ten thousand Pharaohs, it will be no defence for those who permitted it, to say, "We hoped, we supposed, we trusted, that slavery could not go there;" Nemesis, as she plies her scorpion lash, will reply, "*You might have made it certain.*"

On this great question of freedom or slavery, I have observed with grief, nay, with anguish, that we, at the North, break up into hostile parties, hurl criminations and recriminations to and fro, and expend that strength for the ruin of each other, which should be directed against the enemies of Liberty; while, at the South, whenever slavery is in jeopardy, all party lines are obliterated, dissensions are healed, enemies become friends, and all are found in a solid column, with an unbroken front. Are the children of darkness to be forever *so much* wiser than the children of light? In the recent choice of delegates for the Nashville Convention, I have not seen a single instance where Whig and Democrat have not been chosen as though they were Siamese twins, and must go together. But here it often happens, that as soon as one party is known to be in favor of one man, this act alone is deemed a sufficient reason why another party should oppose him. Why can we not combine for the sacred cause of freedom, as they combine for slavery? No thought or desire is further from my mind than that of interfering with any man's right of suffrage; but if, (which is by no means impossible, nor perhaps improbable,) the fate of New Mexico should be decided by one vote, and my vote should have been the cause of a vacancy in any Congressional district that might have sent a friend to freedom, I should say, with Cain, "My punishment is greater than I can bear."

On the subject of the present alienation and discord between the North and the South, I wish to say that I have as strong a desire for reconciliation and amity as any one can have. There is no *pecuniary* sacrifice within the limits of the Constitution, which I would not willingly make for so desirable an object. Public revenues I would appropriate, private taxation I would endure, to relieve this otherwise thrice-glorious Republic from the calamity and the wrong of slavery. I would not only resist the devil, but if he will flee from me, I will build a bridge of gold to facilitate his escape. I mention this to prove that it is not the value, *in money*, of territorial freedom, for which I contend, but its value *in character, in justice, in human happiness.* While I utterly deny the claim set up by the South, yet I would gladly consent that my Southern fellow-citizens should go to the territories and carry there every kind of property which I can carry; I would then give to the Southern States their full share of all the income ever to be derived from the sales of the public lands, or the leasing of the public mines; and whatever, after this deduction, was left in the public treasury, should be appropriated for the whole nation, as has been the practice heretofore. That is, in consideration of excluding slavery from the territories, I would give the South a double share, or even a threefold share, of all the income that may ever be derived from them. Pecuniary surrenders I would gladly make for the sake of peace, but not for peace itself would I surrender Liberty.

It would be to suppose our merchants and manufacturers void of common foresight, could they believe that concession now will bring security hereafter. By yielding the moral question, they

jeopard their pecuniary interests. Should the South succeed in their present attempt upon the territories, they will impatiently await the retirement of Gen. Taylor from the Executive Chair, to add the "State of Cuba," with its 500,000 slaves, its ignorance and its demoralization, to their roll of triumph. California will be a free trade State, by the most certain of all biases. They will have nothing to sell but gold; they will have everything to buy,—cradles and coffins, and all between. If New Mexico is slave, it will also be free trade; and Cuba as certainly as either,—though in that island facilities for smuggling will reduce the difference between tariff and free trade to nothing. A surrender therefore, by our Northern business men, will be most disastrous to the very business that tempts them to surrender. Will they take no warning from the fact that their apathy in regard to Texas repealed the tariff of 1842? This is a low motive, I admit; but it may be set as a back-fire to the motive by which some of them appear to be influenced. There was no need, not a shadow of need, of perilling any principle, nor any interest. Had the North stood firm, had they been true to the great principles they have so often and so solemnly proclaimed, the waves of Southern violence would have struck harmless at their feet. He is not learned in the weather who does not know that storms from the South, though violent, are short. We are assailed now because we have yielded before. The compromise of 1820 begat the nullification of 1832; the compromise of 1832 inspired the mad exploit of compassing Texas, which our greater madness made sane. The moral paralysis which failed to oppose the Mexican war, has given us the territories. If the territories are now surrendered, we shall have Cuba, and an indefinite career of conquest and of slavery will be opened on our Southwestern border. Every new concession transfers strength from our side to the side of our opponents; and if we cannot arrest our own course when we are just entering the rapids, how can we arrest it when we come near the verge of the cataract? The South may rule the Union, but they cannot divide it. Their whole Atlantic seaboard is open to attack, and powerless for defence; and the Mississippi river may as easily be divided physically as politically into independent portions. With these advantages, let us never aggress upon their rights, but let us maintain our own.

Fellow-citizens, I would gladly relieve the darkness of this picture by some gleams of light. There are two hopes which, as yet, are not wholly extinguished in my mind. Beyond all question a compromise bill will be reported by the committee of thirteen, in which free California will be made to carry as great a burden of slavery as she can bear. It is still *possible* that the House will treat as it deserves this adulterous union. A single vote may turn the scale, and Massachusetts may give that vote. Not improbably, too, the fate of the bill may depend upon the earnestness and decision with which Northern constituencies make their sentiments known to their representatives, whether by petitions, by private letters, or by public resolutions. Let every lover of freedom do his best and his most.

Should the North fail, I have still one hope more. It is that New Mexico will do for herself what we shall have basely failed to do for her. If both these hopes fail, our country is doomed to run its unobstructed career of conquest, of despotism, and of infamy.

I have now, my fellow-citizens, given you my "Views and Opinions" on the present crisis in our public affairs. Had I regarded my own feelings I should have spoken less at length; but the subject has commanded me. I trust I have spoken respectfully towards those from whom I dissent, while speaking my own sentiments justly and truly. I have used no asperity, for all my emotions have been of grief and not of anger. My words have been cool as the telegraphic wires, while my feelings have been like the lightning that runs through them. The idea that Massachusetts should contribute, or consent, to the extension of Human Slavery!—is it not enough, not merely to arouse the living from their torpor, but the dead from their graves! Were I to help this, nay, did I not oppose it with all the powers and faculties which God has given me, I should see myriads of agonized faces glaring out upon me from the future, more terrible than Duncan's at Macbeth; and I would rather feel an assassin's poignard in my breast than forever hereafter to see "the air-drawn dagger" of a guilty imagination. In Massachusetts, the great drama of the Revolution began. Some of its heroes yet survive amongst us. At Lexington, at Concord, and on Bunker Hill, the grass still grows greener where the soil was fattened with the blood of our fathers. If, in the providence of God, we must be vanquished in this contest, let it be by force of the overmastering and inscrutable powers above us, and not by our own base desertion.

I am, gentlemen, your much honored, obliged, and obedient servant, HORACE MANN.

LETTER II.

To the Editors of the Boston Atlas;

GENTLEMEN; Your semi-weekly of the 1st inst. contains a letter of the Hon. Daniel Webster, in which he has been pleased to refer to me. I wish to reply. To prevent all chance of mistake, I quote the following passages:

"But, at the same time, nothing is more false than that such jury trial is demanded in cases of this kind by the Constitution, either in its letter or in its spirit. The Constitution declares that in all criminal prosecutions there shall be a trial by jury. The claiming of a fugitive slave is not a criminal prosecution.

"The Constitution also declares that in suits at common law the trial by jury shall be preserved; the reclaiming of a fugitive slave is not a suit at the common law; and there is no other clause or sentence in the Constitution having the least bearing on the subject.

"I have seen a publication by Mr. Horace Mann, a member of Congress from Massachusetts, in which I find this sentence. Speaking of the bill before the House, he says: 'This bill derides the trial by jury secured by the Constitution. A man may not lose his horse without a right to this trial, but he may lose his freedom. Mr. Webster speaks for the South and for slavery, not for the North and for freedom, when he abandons this right.' This personal vituperation does not annoy me, but I lament to see a public man of Massachusetts so crude and confused in his legal apprehensions, and so little acquainted with the Constitution of his country, as these opinions evince Mr. Mann to be. His citation of

a supposed case, as in point, if it have any analogy to the matter, would prove that, if Mr. Mann's horse stray into his neighbor's field, *he cannot lead him back without a previous trial by jury to ascertain the right.* Truly, if what Mr. Mann says of the provisions of the Constitution in this publication be a test of his accuracy in the understanding of that instrument, he would do well not to seek to protect his peculiar notions under its sanction, but to appeal at once, as others do, to that higher authority which sits enthroned above the Constitution and above the law."

I must deny this charge of "personal vituperation," and I regret that Mr. Webster, while disclaiming "annoyance" at what I said, should betray it. I believe every part of my "Letter" to be within the bounds of courteous and respectful discussion. There is nothing in it which might not pass between gentlemen, without interrupting relations of civility and friendship. Though full of regret at his novel position, and of dissent from his unwonted doctrines, yet it abounds in proofs of deference to himself. I must now, however, be permitted to add that the highest eminence becomes unenviable, when it breeds intolerance of dissent, or bars out the humblest man from a free expression of opinion.

Mr. Webster "laments to see a public man of Massachusetts so crude and confused in his legal apprehensions, and so little acquainted with the Constitution of his country, as these opinions evince Mr. Mann to be." Yet he points out no error of opinion. He specifies nothing as unsound. He presents no information, indictment, bill of particulars, or even the "common counts." Judgment and condemnation alone appear. He seems to have taken it for granted that he had only to say I was guilty, and then proceed to punish. I protest against and impugn this method of proceeding, by any man, however high, against any man, however humble.

When Mr. Webster penned his "lamentations" over my crudeness, confusion, and ignorance, he doubtless meant to deal me a mortal blow. The blow was certainly heavy; but the question still remains, *whether it hit.* Polyphemus struck hard blows, but his blindness left the objects of his passions unharmed.

But wherein do those erroneous "opinions" consist, which Mr. Webster does not deign to specify, but assumes to condemn? Fortunately, in writing the sentence which he quotes for animadversion, I followed the precise meaning of Judge Story, as laid down in his Commentaries; and in regard to the only point which is open to a question, *I took the exact words* of that great jurist. He speaks of "the right of a trial by jury, in civil cases," as an existing right *before* the seventh article of amendment to the Constitution, which *preserves this right* "in suits at common law," had been adopted.—3 Comm., 528. Instead of transcribing Judge Story's words, "in civil cases," which present no distinct image to common minds, I supposed the every-day case of litigation respecting a horse, which is a "civil case;" and this difference of form is the only difference between my language and that of the learned Judge. I can wish Mr. Webster no more fitting retribution, after reposing from this ill tempered attack upon me, than to awake and find that it was Judge Story whom he had been maligning.

Does not the authority of Judge Blackstone also support my position?

"Recapture or reprisal," says he, "is another species of remedy, by the mere act of the party injured. * * * But as the public peace is a superior consideration to any one man's private property; and as, if individuals were once allowed to use private force as a remedy for private injuries, all social justice must cease, the strong would give law to the weak, and every man would revert to a state of nature; for these reasons it is provided that this natural right of recaption shall never be exerted, where such exertion must occasion strife and bodily contention, or endanger the peace of society. If, for instance, my horse is taken away, and I find him in a common, a fair, or a public inn, I may lawfully seize him to my own use; but I cannot justify breaking open a private stable, *or entering on the grounds of a third person, to take him,* should he be feloniously stolen; *but must have recourse to an action at law*"—3 *Com.*, 4-5.

But the opinion expressed by me on this point does not need the authority of any name to support it; and the illustration which I gave is not only intelligible to every sensible man, but is also apposite. I said "a man may not lose his horse [his property in a horse] without a right to this trial." Mr. Webster's comment is, that this case, "if it have any analogy to the matter," means, that if a man's horse "stray into his neighbor's field, *he cannot lead him back without a previous trial by jury to ascertain the right.*" Was ever the plain meaning of a seutence more exactly changed about, end for end? Mr. Webster may pitch summersets with his own doctrines, but he has no right to pitch them with mine. I said a man may not *lose* his horse, or his property in a horse, without a right to the trial by jury. He says I said, a man cannot *find* or *retake* a lost horse, without a previous trial! *Dulce est desipere in loco.* Or, it is pleasant to see a grave Senator play upon words; though there must be some wit to redeem it from puerility.

But the childishness of this criticism is not its worst feature. What is the great *truth* which Mr. Webster and his apologists attempt here to ridicule? It is that, while every man amongst us, in regard to any piece of property worth more than twenty dollars, of which violence or fraud may attempt to despoil him, has a right to a trial by jury, yet a man's freedom, and that of his posterity forever, may be wrested from him, as our law now stands, without such a trial. Does not this hold a man's freedom to be of less value than twenty dollars? If two adverse claimants contest title to an alleged slave, whose market value is more than this sum, each is entitled to a jury to try the fact of ownership. But if the alleged slave declares here, in Massachusetts, that he owns himself, he is debarred from this right. And this truth, or a common illustration of it, Mr. Webster and his apologists think a suitable topic for sneers or pleasantry! A foreign proverb says, that for a man to kill his mother *is not in good taste.* I trust the moral and religious people of Massachusetts have too much *good taste* to relish jokes on such a theme.

MR. BUTLER'S BILL, OR KIDNAPPING MADE EASY.

I said that Mr. Butler's bill "derides" the trial by jury. By that bill every commissioner and clerk of a United States court, every marshal and collector of the customs, and the seventeen thousand postmasters of the United States, are severally invested with jurisdiction and authority

in all parts of the United States, to deliver any man, woman, or child in the United States, into custody, as a slave, on the strength of an *ex parte* affidavit, made anywhere in the United States. This affidavit may have been made a thousand miles off, by no one knows whom, and certified to by a person who never saw or heard of the individual named in it. A forged affidavit, or a fictitious affidavit would often answer the purpose as well, for how difficult, and in many cases, how impossible, to prove its spuriousness. Did oppression ever before conceive such a tribunal, so countless in numbers, so ample in jurisdiction, so formidable in power? Had a bill similar to this been proposed in the British Parliament, from 1763 to 1776, what would our Fathers have said of it? Yet this bill, with some kindred amendments, heightening its features of atrocity, Mr. Webster promised "to support, with all its provisions, to the fullest extent."

What aggravates the wrong, is, that the cruelties of the measure would fall upon the poor, the helpless, the ignorant, the unfriended. The bill would have been far less disgraceful, had its provisions borne upon the men who should pass it; because, in such case, there would have been a touch of equality. Now, if this bill does not "*deride*" all guaranties for the protection of human liberty, it is only because my word of reprobation is too weak. It is only because one needs "to tear a leaf from the curse-book of Pandemonium" in order to describe it by fitting epithets.

Another remarkable feature of Mr. Butler's bill, is, that it provides no penalty whatever for any one who shall abuse, or fraudulently use the dangerous authority which it gives. It furnishes endless temptations and facilities for committing wrong; it imposes no restraints; it warns by no threats of retribution.

Mr. Webster calls me to account for some unspecified erroneous "opinion," expressed in relation to this bill. Can any opinion be so false to the Constitution, as this bill to humanity? I deprecate error of all sorts; but hold it to be more venial to err in judgment than in heart.

I said that in promising to support Mr. Butler's bill, "with all its provisions to the fullest extent," Mr. Webster "abandoned" the right to a trial by jury. I spoke of him as a Senator, as one who, with his co-legislators, has full right and power under the Constitution, to secure this form of trial to the alleged slave, or to a known freeman seized as a slave. Mr. Seward's bill, providing for the trial by jury, in such cases, was before him. He took no notice of it. He passed by "on the other side," while he bestowed his best encomium on Mr. Butler's bill, by promising to support it. Was not this an "abandonment," under all the synonymes given in the dictionary?

HIGHER POWERS, AND LOWER.

Mr. Webster advises me, in a certain contingency, "to appeal to that higher authority which sits enthroned above the Constitution and above the law." I take no exception to this counsel, because of its officiousness, but would thank him for it. My ideas of duty require me to seek anxiously for the true interpretation of the Constitution, and then to abide by it, unswayed by hopes or fears. If the Constitution requires me to do anything which my sense of duty forbids, I shall save my conscience by resigning my office. I am free, however, to say, that if, in the discharge of my political duties, I should transfer my allegiance to any other power, I should adopt Mr. Webster's advice, and go to the power "which sits enthroned above," rather than to descend to that opposite realm, whence the bill he so cordially promised to support, must have emerged.

I wish, however, to remark, that though I acknowledge the Constitution to be my guide while under oath to support it, yet I do not relish any fling either at the powers above us, or at those who reverence them. I hold it be not only proper, but proof of sound moral and religious feeling, to look to the perfect law of God for light to enable us more justly to interpret the imperfect laws of man. Especially, when we are proposing to make or amend a law, ought we to take our gauge of purpose and of action from the highest standard.

Noy, that Solomon of the law, thought it not improper to say: "The inferior law must give place to the superior; man's laws to God's laws."—*Maxims*, pp. 6—7.

"The law of Nature," says Blackstone, "being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other. It is binding all over the globe; in all countries, at all times. No human laws have any validity, if contrary to this; and such of them as are valid, derive all their force and all their authority, mediately or immediately from this original."—1 *Com.*, 41.

Fortescue, the Chancellor of Henry VI, in his *de Laudibus Legum Angliæ*, cap. 42, has the following passage, the consideration of which, in requital for Mr. Webster's advice to me, I respectfully commend to him:

"That must necessarily be adjudged a cruel law, which augments slavery, and diminishes Liberty. For Human Nature imp'ores without ceasing for Liberty. Slavery is introduced by man, and through his vice. But Liberty is the gift of God to man. Wherefore, when torn from a man, it ever yearns to return; and it is the same with everything when deprived of its natural Liberty. On this account, that man is to be adjudged cruel, who does not favor Liberty. By these considerations the Laws of England, in every case, give favor to Liberty."—*Cap.* 42.

CONSTITUTIONAL PROVISIONS FOR TRIAL BY JURY, WITH HISTORICAL REFERENCES.

I. *Where Congress has power to provide for such trial.*

II. *Where it is the duty of Congress to do so.*

Having defended my own propositions, I shall now take the liberty to examine some of Mr. Webster's.

He says "the Constitution declares that in all criminal prosecutions, there shall be a trial by jury;" and that, "in suits at common law the trial by jury shall be preserved." He then adds, "there is no other clause or sentence in the Constitution having the least bearing upon the subject." Mark his words: "There is no other clause or sentence in the Constitution, *having the least bearing on the subject*." This I deny.

Here Mr. Webster virtually declares that, but for the above-named two provisions, the right of the trial by jury would not have been secured to us by the Constitution in any case. Of course, Congress would have been under no obligation, nor would it have had any power, to provide by law for such trials.

Were I to say that this assertion borders on the incredible, one might well ask, which side of the line does it lie?

The provision for a trial by jury, *in criminal prosecutions*, is in the third clause of the second section of the third article, and is repeated, and somewhat enlarged, in the fifth and sixth articles of amendment.

But the provision for trial by jury, *in suits at common law*, is in the seventh article of amendment; and neither this provision, nor any semblance of it, is to be found, in express words, in any part of the Constitution as it came from the hands of its framers, and was adopted by the States.

According to Mr. Webster, then, Congress were under no obligation, and had no power, to make a law providing for trial by jury, *except in criminal prosecutions*, until *after* the seventh article of amendment had been ratified; for if they had any such power, or were under any such obligation, it must be by virtue of some clause or sentence in the Constitution, *having a "bearing upon the subject."*

Now, the first session of Congress commenced March 4th, 1789, but this seventh article of amendment was not ratified, and did not become a part of the Constitution, according to Hickey, (Hickey's Con., p. 36,) until December 15, 1791.

Until this time, therefore, according to Mr. Webster, the Constitution had secured no right to a trial by jury, except in the case of *criminal prosecutions;* because, until this time, there was no clause or sentence in it, "having the least bearing on the subject" of jury trials in civil cases.

Yet, on the 24th of September, 1789, *and more than two years previous to the adoption of the seventh amendment*, (by which alone, according to Mr. Webster, they had any power to act in the premises,) Congress did pass the judiciary act; by the ninth, twelfth, and thirteenth sections of which it is provided, that the trial of issues in fact, in the District Courts, in the Circuit Courts, and in the Supreme Court, shall, with certain exceptions, be by jury.

The act also empowers the Courts to grant new trials "for reasons for which new trials have usually been granted in the courts of law." In what courts of law? Did it not mean the Courts in Westminster Hall, and those in this country formed after that ancestral model? And does this show beyond question or cavil, that the principle of the jury trial, *in civil cases*, was incorporated into the Constitution of the United States, originally; and that it was universally understood to be so by its framers, and by their contemporaries, the members of the first Congress?

From the Constitution alone, then, and not from any power above it, or outside of it, did Congress derive its power, on the 24th of September, 1789, and more than two years before the seventh amendment was adopted, to pass the Judiciary Act, and to fill it full of the fact and the doctrine of jury trials in civil cases. And if Congress, at that time, had legislated on the subject of fugitive slaves, would it not have had the same power to provide the trial by jury, to determine the question, slave or free, as it had to provide for this mode of trial in other cases?

All the State Conventions for adopting the Constitution, whose debates are preserved, and all the leading men who figured in them, held, contrary to Mr. Webster, that the third article in the Constitution, providing for courts, carried jury trials in civil cases with it. Mr. Marshall, afterwards Chief Justice Marshall, said in the Virginia Convention: "Does the word Court only mean the Judges? Does not the determination of a Jury necessarily lead to the judgment of the Court? Is there anything which gives the judges exclusive jurisdiction of matters of fact? What is the object of a jury trial? To inform the Court of the facts. When a Court has cognizance of facts, does it not follow that they can make inquiry by a jury? It is impossible to be otherwise."—3 *Elliott's Debates*, 506.

The third article in the Virginia Bill of Rights was as follows:

"In controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred."

This article being read in the Convention, Judge Marshall said *the trial by jury was as well secured by the United States Constitution, as by the Virginia bill of rights.—Ib*, 524. He said this in reference to civil cases.

In the Massachusetts Convention, it was said, without a doubt being expressed from any quarter, that "the word *court* does not, either by popular or technical construction, exclude the use of a jury to try facts. When people in common language talk of a trial at the Court of Common Pleas, or the Supreme Judicial Court, do they not include all the branches and members of such courts, the jurors as well as the judges? They certainly do, whether they mention the jurors expressly or not. Our State legislators have construed the word *court* in the same way."—2 *Elliott's Debates*, 127.

Such was the doctrine maintained by the leading minds in the State Conventions; by Christopher Gore, in Massachusetts; by Judge Wilson, and Chief Justice McKean, in Pennsylvania; by Chief Justice Marshall, Judge Pendleton, and Mr. Madison, in Virginia; by Judge Iredell, in North Carolina, and many other distinguished names.

In the Virginia Convention, objection was made to the Constitution, because it did not *expressly* secure to the accused the privilege of challenging or excepting to jurors in criminal cases. But Mr. Pendleton, the President of the Convention, and for so many years, the highest judicial officer in the State, replied: "When the Constistitution says that the trial shall be by jury, does it not say that every incident will go along with it?"—3 *Elliott's Debates*, 497.

So when the Constitution provided for "courts," and defined their jurisdiction, it clearly contemplated the trial by jury, in regard to all such rights of the citizen as had been usually, theretofore, tried by a jury. Congress, indeed, might fail to perform its duty; but in such case, no provisions of the Constitution, however express and peremptory, would secure the rights of the people.

It is perfectly well known to every student of the Constitution, that the only reason why that instrument did not make *express* provision for the trial by jury, in civil cases, was the difficulty of running the dividing line between the many cases that should be so tried, and the few that should not. All were agreed that ninety-nine per cent. of all civil cases should be tried by jury; but they could not agree upon the classes of cases from which the remaining one per cent. should be taken.

In this connection, it is worth while to notice the heading or preamble of the Joint Resolutions for submitting certain proposed amendments of the Constitution to the States, among which was the seventh. It is as follows:

"The Conventions of a number of the States having at the time of their adopting the Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory or restrictive clauses should be added; and as the extending the ground of public confidence in the Government will best insure the beneficent ends of its institution, RESOLVED," &c.

From this it appears that the first Congress only proposed to submit certain "*further declaratory and restrictive clauses*," "to prevent misconstruction or abuse of its powers." This heading or title, of course, does not enlarge or limit the meaning of the amendments; but it shows the view of their scope and intendment which their authors held. But what is the seventh amendment but a "declaratory and restrictive clause," securing the trial by jury, in cases at common law, "where the value in controversy shall exceed twenty dollars," and abandoning it where the value is less?

The phraseology of the amendment is full of significance: "The right of trial by jury shall be preserved." Not created, but preserved. Not instituted *de novo*, but continued. How can a right be *preserved*, which does not already *exist*?

In speaking of the trial by jury, in criminal cases, Judge Story uses the same word. He says it was "preserved." In neither class of cases, civil or criminal, was it ever abandoned or lost, through the fault of the Constitution. If not always enjoyed by the citizen, it has been through the dereliction of Congress in not passing the requisite laws.

The great men who submitted this seventh amendment to the States, treated the trial by jury, in civil cases, as a then subsisting constitutional right. They passed a law, to put the practical enjoyment of this right into the hands of the people, well knowing that there is scarcely a right which we hold under the Constitution which we can beneficially possess or use, without the intervention of some law, as its channel or medium.

Suppose this seventh amendment had never been adopted, on what ground would the trial by jury, in civil cases, have rested up to the present day?

In asserting, therefore, that, besides the references he has made, there is not another "clause or sentence in the Constitution, *having the least bearing on the subject*" of jury trials, Mr. Webster is contradicted by the members of the General Convention, by the State Conventions, by the Senators and Representatives, who passed the Judiciary act, by President Washington who signed it, and by all the judges who administered that act until the seventh amendment was adopted.

II. *Where it is the duty of Congress to provide for trial by jury.*

But another of Mr. Webster's assertions is still more extraordinary. He says "nothing is more false than that such jury trial [a trial by jury for an alleged slave, or for a freeman claimed as a slave,] is demanded by the Constitution, either in its letter or in its spirit."

I make a preliminary remark upon the amazing untruth embodied in the form of this proposition.

"*Nothing is more false*;" that is, if I, or any one, had affirmed that our Constitution forbids trial by jury, in all cases, under penalty of death; or that it creates a hereditary despotism; or that it establishes the Catholic religion with the accompaniment of an inquisition for each State; or that it does all these things together; it would not be more "*false*" to the "*spirit*" of the Constitution, than to say that it demands the trial by jury, when a man who is seized as a slave, but who asserts that he is free, invokes its protection.

But this pertains to the *form* only of his assertion. I proceed to inquire whether its substance be not as indefensible as its form.

In another part of Mr. Webster's letter, he says, that he sees "no objection to the provisions of the law" of 1793. Of course, he sees no objection to Mr. Butler's bill, and its amendments; but he prefers them to Mr. Seward's. And he now says, there is nothing in the letter or in the "spirit" of the Constitution, which demands the jury trial for an alleged slave, or for a freeman captured and about to be carried away as a slave.

Feeble and humble as I am, great and formidable as he is, I join issue with him, on this momentous question, and put myself upon the country.

Our Constitution, as the present generation has always been taught, yearns towards liberty and the rights of man. The trial by jury, in the important cases of limb, life, or liberty, is essential to these rights. The two, therefore, have such close affinity for each other, as to render it highly probable, if not morally certain, that the framers of the former would make provision for the latter; that they would lay hold of it, as by a law of instinct, to carry out their beneficent purposes. The trial by jury was necessary to the vitality of the Constitution; and it would hardly be too strong an expression to say that the Constitution, as it came from the hands of its founders, necessitated the trial by jury.

The object for which the Constitution was framed, as set forth in its preamble,—namely, to "establish justice," "promote the general welfare," and "secure the blessings of liberty," to the people.—could never be accomplished without the trial by jury. The preamble is not appealed to as a source of power; but it touches, as by the finger, the objects which it contemplated; it suggests the means by which its beneficent purposes were to be fulfilled, and it indicates the rules of interpretation by which all its provisions are to be expounded.

And not only the objects for which the Constitution professes to exist, but historical facts from

the time of Magna Charta, and before that time; the practice of the English and of our Colonial and Provincial Courts before the Revolution and during the Confederacy;—in fine, all analogies and tendencies of constitutional law, and whatever belongs to ideas of freedom, conspire to force the expectation upon us, that, in a matter of such vast concernment as the life-long liberty or bondage of a man and his offspring, it has *not* left us without the right of trial by jury.

The very first law "for the general good of the Colony of New Plymouth, (1623,)" was, "that all criminal acts, and also all matters of *trespasses* and DEBTS, between man and man, should be tried by the verdict of twelve honest men."

In that fearful array of crimes which the Declaration of Independence charges home upon the King of Great Britain, that sublime instrument enumerates the following as among the most flagitious: "For depriving us, in many cases, of the benefits of trial by jury," and "for protecting his troops, *by a mock trial*, from punishment for any murders which they should commit on the inhabitants of these States."

According to Blackstone, the right to a trial by jury had been held, "time out of mind," to be the birthright of Englishmen. The 29th chapter of the Great Charter guarantied this right, not only in cases of liberty, life, and limb, but in cases of property, real and personal.

In England, it has become a traditional saying, and drops from the common tongue, that the great object of King, Lords, and Commons, is to get twelve men into a jury box.

Judge Story says, "When our more immediate ancestors removed to America, they brought this great privilege with them, *as their birthright and inheritance*, as a part of that admirable common law which had fenced round, and interposed barriers on every side, against the approaches of arbitrary power. It is now incorporated into all our State Constitutions, as a fundamental right; and the Constitution of the United States would have been justly obnoxious to the most conclusive objection, if it had not recognised and confirmed it in the most solemn terms."—3 Com., 652-3.

Is it conceivable, then, that the heroes and sages of the Revolution, who rose in resistance to the most formidable Power on earth; so many of whom rose against their own kindred in the mother country, because they loved liberty better than father or mother, or brother or sister, and who endured the privations and horrors of a seven years' war,—is it conceivable, I say, that, when they had achieved their independence, and there was no longer any earthly power to control them, they should have framed a fundamental law, and should not have imbued that law with the "*spirit*" of the trial by jury, as its breath of life? As British subjects, they were entitled to this trial. As Americans, did they renounce it? Did they wage war for seven years in order to place themselves in a worse condition than they had been placed in by their "tyrant?" Mr. Webster says they did. He charges this infinite folly and blindness upon them singly and collectively, one and all.

DECISIONS OF THE SUPREME COURT.

But, to examine more particularly the phraseology of the seventh amendment. What is the true meaning of those descriptive words, "suits at common law?" Has not Mr. Webster, relying on his high reputation, disposed of this matter a little too summarily? He says, "the Constitution declares that in suits at common law, the trial by jury shall be preserved;" but he adds, "the reclaiming of a fugitive slave is not a suit at common law."

But the Supreme Court of the United States has furnished us with an authoritative interpretation of the words of the Constitution bearing on this subject. In the case of *Cohens* vs. *Virginia*, 6 Wheaton R., 407, they define what is meant by a "suit." These are their words:

"What is a *suit?* We understand it to be the prosecution, or pursuit, of some *claim*, demand, or request. In law language, it is the prosecution of some demand in a court of justice. 'The remedy for every species of wrong, is,' says Judge Blackstone, 'the being put in possession of that right whereof the party injured is deprived.' The instruments whereby this remedy is obtained, are a diversity of *suits* and actions, which are defined by the Mirror to be 'the lawful demand of one's right;' or, as Bracton and Fleta express it, in the words of Justinian, '*jus prosequendi in judicio quod alicui debetur.*'—(the form of prosecuting in trial, or judgment, what is due to any one.) Blackstone then proceeds to describe every species of remedy by suit; and they are all cases where the party suing claims to obtain something to which he has a right.

To commence a suit, is to demand something by the institution of process in a court of justice; and to prosecute the suit, is, according to the common acceptation of language, to continue that demand."

According to the Supreme Court, then, a *suit* is the prosecution of some *claim*, demand, or request. But the proceedings for a fugitive slave, according to the very letter of the Constitution, are instituted to prosecute a *claim*. The person held to service or labor is to be delivered up, "on *claim* of the party to whom such service or labor may be due."

Still further, in a decision bearing directly on the right to a trial by jury, the Supreme Court have defined the term "common law" in special reference to its meaning in the amendment to the Constitution, which secures this right "in suits at common law." These are their words:

"It is well known, that in civil causes, in courts of equity and admiralty, juries do not intervene; and that courts of equity use the trial by jury only in extraordinary cases, to inform the conscience of the court. When, therefore, we find that the [7th] amendment requires, that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is, that this distinction was present to the minds of the framers of the amendment. By *common law* they meant, what the Constitution denominated in the third article 'law;' not merely suits, which the *common* law recognised among its old and settled proceedings; but suits, in which *legal* rights were to be ascertained and determined, in contradistinction to those in which equitable rights alone were recognised, and equitable remedies were administered, or in which, as in the admiralty, a mixture of public law, and of maritime law and equity, was often found in the same suit. Probably there were few, if any, States in the Union, in which some new legal remedies, differing from the old common law forms, were not in use; but in which, however, the trial by jury intervened, and the general regulations in other respects, were according to the course of the common law. Proceedings in cases of partition, and of foreign and domestic attachment, might be cited, as examples variously adopted and modified. *In a just sense, the amendment, then, may well be construed to embrace all suits, which are not of equity or admiralty jurisdiction,* WHATEVER MAY BE THE PECULIAR FORM WHICH THEY MAY ASSUME TO SETTLE LEGAL RIGHTS."—*Parsons* vs. *Bedford*, 3 *Peters's Rep.*, 456-7.

The last sentence I have underscored. In this sentence, the Supreme Court plainly say, that, if the subject-matter of the litigation, or the object of the proceeding, be to determine a "legal right" which was formerly determined by a "suit at common law," then such proceeding is embraced in the seventh amendment, and either party in interest has a right to the trial by jury. Now, is it not clear that any proceeding which determines whether a man owns himself, or is owned by another man, and which delivers one man into the custody of another, as his slave, or refuses so to deliver him, is, "whatever peculiar form it may assume," a proceeding "to settle a legal right,"—the highest legal right? It is not a right in equity, in admiralty, or under the maritime law; but strictly and exclusively a *legal right*, and nothing else. According to the doctrine of the Supreme Court, then, in the above cited case, the parties to such a proceeding have a right, under the seventh amendment, to a trial by jury. At least, is not such the "*spirit*" of the amendment?

But there is another well-known fact, which gives pertinence and stringency to the above view. At common law, the writ *de homine replegiando*,—the writ of personal replevin, or for replevying a man,—was an original writ; a writ which the party could sue out, of right; one to be granted on motion, without showing cause, and which the Court of Chancery could not supersede. It was, according to the very language of our Supreme Court, recognised by the common law "among its old and settled proceedings." The form of it is found in that great arsenal of common law writs, the *Registrum Brevium*. A man, says Comyn, may have a *homine replegiando* for a negro; or for an Indian brought by him into England and detained from him; or it may be brought by an infant against his testamentary guardian; *or by a villein against his lord.* (Dig., Title Imprisonment, L. 4)

If it could be brought by a villein against his lord, then it was the very writ for an alleged slave against an alleging owner. It was the mode provided by the common law for the determination of the *legal right* asserted in a human being. I have always understood that, before the Revolution, and before the framing of our Constitution, Comyn's Digest was a work of the highest authority. It must have been well known to all the lawyers in the Convention. Did they expect, then, that when an alleged slave, or a known freeman, should be seized, that he should be hurried into bondage without any right to this ancient muniment of the subject's liberties?

But "the reclaiming of a fugitive slave," says Mr. Webster, "is not a suit at the common law." The proceedings provided for by the statute of 1793, to which he "sees no objection," have no analogy to the writ *de homine replegiando*. But can you destroy the right to a jury trial by changing the process? A sand-hiller from Georgia or North Carolina, cannot come to Massachusetts and eject Mr. Webster from his Marshfield farm, without being compelled to submit the question of title to a jury. But suppose Congress should say, in effect, that any one of the seventeen thousand postmasters in the United States might be brought into Massachusetts, (and, among so numerous a body, it is no libel to say there are some reckless men,) and that the said sand-hiller might go before the said imported postmaster, and after proof "to his satisfaction," "either by oral testimony or by affidavit,"—an affidavit, be it remembered, taken anywhere in the United States,—then the claimant shall be put into immediate possession of the said farm, with a right to recover costs; and suppose Mr. Webster should spurn the authority of this illegitimate Court, and demand an observance of the ancient forms of law, and a trial by jury under the seventh amendment; then the claimant has only to borrow Mr. Webster's own words, and say, "this is not a suit at the common law:"—suppose all this, I say, and I would then ask if such a proceeding would be satisfactory to the last named gentleman? The common sense of mankind is authority good enough to answer such a question, but we have high legal authority in addition.

In *Baker* vs. *Riddle*, Mr. Justice Baldwin, one of the judges of the Supreme Court of the United States, held that it was not in the power of Congress to take away the right of trial by jury, secured by the seventh amendment, neither,—"1. By an organization of the courts in such a manner as not to secure it to suitors;" nor,—"2. By authorizing the courts to exercise, or their assumption of, equity or admiralty jurisdiction over cases at law." "This amendment," says he, "preserves the right of jury trial against any infringement by any department of the Government."—*Baldwin's Rep.*, 404.

Now, what was Mr. Butler's bill, but "a new organization of the courts," or, rather, "a new creation of some twenty thousand courts," in such a manner as not to secure [the right of trial by jury] to suitors?" It was, indeed, a violation of both of the principles laid down by Judge Baldwin. It was the creation of tribunals unknown to the common law, and authorizing those tribunals to decide upon rights not belonging to either "equity or admiralty jurisdiction."

In this connection, I will refer to the case of *Lee* vs. *Lee*, 8 *Peters's Rep.*, 44.

By act of Congress, of April 2, 1816, it was declared that no cause should be removed from the Circuit Court of the District of Columbia to the Supreme Court, by appeal or writ of error, "unless the matter in dispute shall be of the value of one thousand dollars or upwards." The plaintiffs in error were claimed as slaves. Their petition for freedom in the court below had been decided against them; and from this decision they appealed. The defendant in error took the objection that they,—their bodies and souls,—were not worth one thousand dollars, and therefore that they had no right to appeal. But the court said:

"The matter in dispute, in this case, is the freedom of the petitioners. The judgment of the court below is against their claims to freedom; the matter in dispute is, therefore, to the plaintiffs in error, the value of their freedom, *and this is not susceptible of a pecuniary valuation.* Had the judgment been in favor of the petitioners, and the writ of error brought by the party claiming to be the owner, the value of the slaves as *property* would have been the matter in dispute, and affidavits might be admitted to ascertain such value. But affidavits estimating the value of freedom are entirely inadmissible; and no doubt is entertained of the jurisdiction of the court."

Now, if the Supreme Court of the United States, in construing a law, felt constrained by their oaths to hold the freedom of a man,—of any man, though he might be a drivelling idiot, or stretched upon his deathbed, with only another hour to breathe,—to be worth more than a thousand dollars, how can a Senator of the United States say, that in passing a law, under which human liberty may be retained or lost, he is not bound at least by the "*spirit*" of the Constitution, if not by its letter, to hold that human liberty to be of greater value than twenty dollars, and therefore to provide the trial by jury for its protection? What can prove more strikingly that Mr. Webster violates the whole "spirit" of the Constitution, when the framers and ratifiers of this amendment covenanted for and decreed the trial by jury, for such a paltry sum of money; and when the judges of the Supreme Court held human liberty to be worth more than any nameable sum of money, while he regards it as a thing to be disposed of by any corrupt postmaster which any corrupt Administration may corruptly appoint. Yet he says: "Nothing can be more false than that a jury trial is demanded in cases of this kind by the Constitution, either in its letter, *or in its spirit*."

DOGMATIZING.

I wish I could find, or felt at liberty to coin some milder word; but for want of a better, I must say that Mr. Webster seems to me, throughout this whole matter, to *dogmatize*. He makes strong assertions without offering even weak reasons. Of this character was his annunciation of the discovery of a new law,—"the law of physical geography,"—which was to suspend moral agency, and take from man his power to commit crime against his brother; as though in ascending hill-sides, freedom and slavery lie in different atmospherical strata, and are bounded by each other impassably; as though there were any mountain so "exceeding high," to whose top even Jesus Christ could go, that Satan could not go there to tempt him. This does not strike the common mind like a true discovery; like the law of gravitation, for instance, discovered by Newton, or the existence of the planet Neptune, by Leverrier. It is rather like that earliest pretended discovery on record, which was designed to seduce, and did seduce, the first parents of us all. *Ye may eat of the forbidden tree, for ye shall* NOT *surely die*. So Mr. Webster says, Let slaves be driven in coffles, or carried in ships' holds to the new Territories; they cannot live there. Will not the results of the two experiments bear a lively analogy to each other, and be likely to reflect similar credit upon their authors?

So, too, when he tore some of the brightest pages from the New Testament, by proclaiming that "there is to be found no injunction against that relation [of slavery] between man and man, in the teachings of the Gospel of Jesus Christ, or of any of his Apostles"! Upon how many Christian hearts did this sentiment fall like an anathema against all truth. He does not say any *express* injunction, but "no injunction;"—none of any kind. No *positive* injunction against slavery in the New Testament! —a book designed to regulate our life and condition for two worlds; yet, altogether, not so large as many a Congressional report; less voluminous than the ordinances of many of our city governments;—a book, therefore, which, from the necessity of the case, must deal with great and immortal principles, and could not descend into specification and detail;—and because such a book as this contains no *express* injunction against slavery, therefore slavery is not forbidden by it, but has the implied approval of its silence! Never was there a more sinister, unsound, unchristian argument uttered by infidel or pagan. Is there any *express* injunction "in the teachings of the Gospel of Jesus Christ, or of any of his Apostles," commanding us to declare the African slave trade piracy? Is there any *express* injunction "in the teachings of the Gospel of Jesus Christ, or of any of his Apostles," against cannibalism? Do they anywhere say, "Ye shall not eat one another?" Yet what enormity and flagitiousness would it be to infer, that, therefore, men and women may turn Ogres and Ogresses, and eat human flesh as they do mutton and beef. The inference in the latter case is every whit as warrantable, as sound, as in the former. Yet I consider that this theological argument does not violate the "spirit" of the Gospel, any more than his constitutional argument violates the "spirit" of the Constitution. John Wesley, who had lived amid slavery, denominates it the "sum of all villanies," and if Christ came into this world and left it, without permeating and saturating all his teachings with injunctions against the injustice, cruelty, pride, avarice, lust, love of domination, and love of adulation, which are the inseparable accompaniments of slavery, then I think the Christian world will cry out, that, so far as this life is concerned, his mission was substantially fruitless.

> "Oh, star-eyed Science! hast thou wandered there,
> To bring us back these tidings of despair?"

So if the Constitution of the United States contains not even any *implied* security for the liberty of all the colored population in the free States and Territories, and for the trial by jury as the only adequate means of securing that liberty, then would it not be more creditable to its framers never to have put their signatures to it?

LIBERTY OF THE CITIZENS MORE VALUABLE THAN THEIR LIFE OR PROPERTY.

The fifth article of amendment declares that "no person shall be deprived of life, liberty, or property, without due process of law." The commentators say that these words, "due process of law," are the equivalent of the phrase "the law of the land," in the 29th chapter of Magna Charta; and hence that "this clause in effect affirms the right of trial according to the process and proceedings of the common law;" that is, by jury. See Story's Comm., 661; 2 Inst., 50, 51; 2 Kent's Comm., 10; 1 Tucker's Black. App., 304.

Now, consider that the general right of trial by jury, in cases of *life*, was expressly secured by the Constitution as originally adopted; that, somewhat more than three years afterwards, the same right was expressly secured for *property*, in suits at common law, whenever the value in controversy should exceed twenty dollars; and then say whether there is not the strongest implication in favor of the same right, in cases of human liberty, which is so much more precious than life and property combined. I do not here say it is an implication that binds the courts in administering a law; that is

not the point under discussion. But is it not an implication that binds the legislator, so that when legislating on the subject, he cannot conscientiously and wilfully abandon it without infidelity to his oath? I do not believe that many men from the free States will ever be found in Congress who will not take this view of the subject. Indeed, not a few of the best lawyers and jurists have held that the implication binds the courts; and therefore, that the statue of 1793 is unconstitutional.*

Mr. Webster treats the two cases, of fugitives from justice and fugitives from service, alike; although one can almost adopt his own language, and say that "nothing is more false" than that they are alike. In regard to the first class, the Constitution says, a person "*charged*" with treason, &c.; but in regard to the second class, it says no person, "*held*," &c.

According to the obvious intent of this language, the alleged fugitive must be *proved* to be *held, bound, obligated.* It is not enough that he be *charged* to be "held" to service, though it is enough that a man be "*charged*" with crime. To bring the first case within the legal category of the second, its terms should be "a person *guilty* of treason," &c., shall be delivered up. Were such the phraseology, would any one doubt that proof of guilt should precede delivery, and that there could be no other foundation for it?

Mr. Webster says, "perhaps the only insuperable difficulty" to a trial by jury, "has been created by the States themselves." Suppose this to be so, I would ask whose duty is it to act first,—that of Congress to provide the trial, or that of the States to remove the impediment? Shall the States repeal their laws first, and leave the liberty of the citizens in jeopardy; or shall not Congress legislate first, and secure that liberty? Which is of the greater importance, that the owner should recover his slave, or that the citizen should retain his freedom? I answer according to the language which the criminal law uses respecting guilt and innocence, that it is better that nine hundred and ninety-nine, that is, an indefinite number, of slaves should escape, than that one free man should be delivered into bondage.

Besides, I think no State legislated on the subject for the protection of its own citizens, until 1842. This was after Congress had neglected for more than fifty years to do its duty. Why, then, should Mr. Webster cast the blame upon the States which forbore for more than fifty years to act protectively for themselves, when Congress, of which he had been a leading member for nearly forty years, had endangered, instead of securing, the liberty of their citizens? When he said that "every member of every Northern Legislature is bound by oath to support the Constitution of the United States," why did not the retort suddenly rise to his mind that he was bound by oath not less than they; and that his oath embraced the men that owned freedom, not less than the men that owned slaves? Besides, he charges only a *part* of the free States with being guilty of unjust legislation. Shall the innocent States suffer because of the others' offence? Rather shall not Congress first supply the means of protection to the citizens of all?

It seems to me, too, that the fourth amendment has an important "bearing upon the subject," because it shows that the master-thought of our fathers, in forming the Constitution, was to secure the liberties of the citizen. It provides against "unreasonable seizures" of "persons." I suppose the main idea of this amendment was to secure the citizen against "unreasonable seizure," even in cases where he should afterwards, and at *some time*, be brought to trial according to the forms of the common law. But what "seizure" can be more "unreasonable," than one whose object is, not an ultimate trial, but bondage forever, without trial? Can mortal imagination conceive of any seizure less entitled than this to be called "reasonable?" With what indignation did our fathers frown because they were transported beyond seas *to be tried;* yet, by our present law, and by the law which Mr. Webster promises to support, a free man may be transported, if not beyond seas, at least beyond lands, and beyond States, *not to be tried*, but to be held in slavery forever without trial. If a free citizen of Massachusetts should be seized and plunged into a Massachusetts prison, to be kept there for life; and his children, as a consequence of his fate, were put into the same, or into other prisons, as fast as they were born, to be also kept for life; and such was the original object and avowed purpose of the seizure, would not this conflict a little with the "*spirit*" of the fourth amendment? And does this proceeding conflict with this "*spirit*" any the less, because the prison is a Southern rice swamp, or cotton field, where the nearest door or outlet of escape is more than a hundred miles from the spot of confinement? In common law actions, trover, detinue, replevin, &c., &c., the trial is to be in the viciuage, except there is some overpowering reason for changing the venue, or place of trial. But here is a transfer of the party, not for a trial, but for evading a trial.

I submit, then, to the public, that here are three provisions of the Constitution, each one of which does have "a bearing on the subject." Each strengthens the other. They form a triple implication, if not a *trinoda necessitas*, which no man, however powerful he may be, can break.

The argument which the lawyers call *ab inconvenienti*,—the argument from inconvenience,—has been pressed into the service of the slaveholder to endanger the liberties of the citizen. I answer, there are two sides to this argument; nor was it wise in the slaveholder, or his Northern friends, to name it. It seems to me quite as *inconvenient* for a free man to lose his liberty, as for a slaveholder to lose his slave. If a Southern man sues a Northern one for the value of a bale of cotton or a barrel of rice, must not the plaintiff await the next term of the court before he can enter his action, abide by the rules of the court respecting continuances, and submit to the order of business in taking his turn before a jury? To obviate this inconvenience, has any legislature or any court ever proposed to set aside or annul, at once, all the securities by which we hold property and life? And how stands the question respecting evidence or proof? If difficult for a slave-

*See an elaborate opinion of Chancellor Walworth, 14 Wend., 507, *Jack* vs *Martin.*

claimant, from Texas, to prove title to his slave in Massachusetts, how infinitely more difficult for a citizen of Massachusetts to prove title to himself in Texas. But Mr. Webster says there are independent courts at the South, "always open and ready to receive and decide upon petitions or applications for freedom." Suppose this to be true; how is a man or a woman, whose master knows that he or she is free, to get to the courts? Mr. Webster seems to think that as soon as a kidnapping slave-dealer shall transport his human prey to the South, he will at once take him to, or allow him to go before a court of justice, or will sell him to some brother Samaritan who will do so. Does not everybody know that any man, who is capable of the enormous guilt of seizing or buying a freeman, will chain, and scourge, and starve and mutilate that freeman, if he but so much as open his lips in audible prayer to God for the restoration of his birthright?

Mr. Webster says, persuasively, that the alleged slave "is only remitted, for inquiry into his rights, to the State from which he fled." But suppose he had never "fled;" but was demeaning himself as a peaceable citizen, under the solemnly pledged protection of the Government, on the soil where he was born! This is the false idea that underlies the whole of Mr. Webster's seductive letter, that under such a bill as Mr. Butler's, nobody but a slave would ever be arrested.

I have no doubt that what Mr. Webster says about Southern courts being "fair and upright," is very generally and extensively true; but I have had a little personal knowledge of Southern courts, and I have no hesitation in saying that there has been one, at least, before which, if a slave were suing for his freedom, and any popular clamor against him should exist, he would have no more hope of obtaining his liberty through the "fairness" of the court, than, if thrown overboard in the middle of the Atlantic ocean, he would have of saving his life by swimming ashore.

MASSACHUSETTS PRINCIPLES, THOUGH RIDICULED, YET RIGHTEOUS.

Mr. Webster holds Massachusetts up to the ridicule of the world, because she "grows fervid on Pennsylvania wrongs;" and he has deemed it his duty to inquire how many seizures of fugitive slaves have occurred in New England within our time. Is this the Christian standard by which to estimate the evil of encroachments upon the most sacred rights of men? If I repose in contentment and indifference, because my own section, or State, or county, is as yet but a partial sufferer, why should I not continue contented and indifferent while I myself am safe? In providing for the liberties of the citizen, under a common Government, I think Massachusetts worthy of all honor, and not of ridicule, because she does "grow fervid on Pennsylvania wrongs," and on the wrongs of an entire race, whether in Pennsylvania or California, or anywhere within the boundaries of our own country. I see no reason why my sympathies as a man, or the obligations of my oath as an officer, in regard to the nearer or the remoter States, should be inversely as the squares of the distances. Even with regard to foreign countries, did Mr. Webster think so, in those better days, when his eloquent appeal for oppressed and bleeding Greece roused the nation, like the voice of a clarion? Did Mr. Webster deem it necessary to make inquisitions through all the New England States, to learn how many Hungarian patriots they had seen shot at the tap of drum, or how many noble Hungarian women had been stripped and whipped in their market-places, before he thrilled the heart of the nation, at the wrongs of Kossuth and his compatriots, and invoked the execrations of the world upon the Austrian and Russian despots? I see no difference between these cases, which is not in favor of our *home interests*, of our own *domestic rights*, except the difference of their bearings upon partisan politics and Presidential rivalries. Mr. Webster quotes and commends Mr. Bissell, who said that those Southern States which had suffered the least from loss of slaves made the greatest clamor. That statement of a fact was well put by Mr. Bissell; but was it well applied by Mr. Webster? In the statement, it was a question as to the loss of property. In the application, it is a question as to the loss of liberty. The latter is not, therefore, the "counterpart" of the former. Blindness to the distinction between the value and the *principle* of property, and the value and the *principle* of liberty, could alone have permitted the comparison.

CONCLUSION.

But I have extended this communication greatly beyond my original purpose. Several other topics contained in Mr. Webster's speech, or growing out of what has since happened in relation to it, and hardly less important than those already considered, must await another opportunity for discussion; unless, indeed, some disposal of the question shall render further discussion unnecessary.

I am not unmindful of the position in which I stand. I am not unaware that circumstances have placed me in an antagonist relation to a man whose vast powers of intellect the world has long so vividly enjoyed and so profoundly admired. I well know that a *personal* contest between us seems unequal, far more than did the threatened contest between the Hebrew stripling and the champion of the Philistines, who had a helmet of brass upon his head, and greaves of brass upon his legs, and the staff of whose spear was like a weaver's beam. But the contest is not between *us*. It is between truth and error; and just so certain as the spirit of Good will prevail over the spirit of Evil, just so certain will Truth ultimately triumph. In such a case as this, there is one point of view in which Mr. Webster is a desirable antagonist; for the thick and far-beaming points of light, which he has left all along his former course of life, cannot fail to expose, to other eyes than his own, the devious path into which he has now wandered.

HORACE MANN.

WASHINGTON, *June* 6, 1850.

NOTES.

Another edition of the preceding communications having been called for, I avail myself of the opportunity it presents, to add a few notes.

I had hoped not to be required to say more on this subject; but, during the past week, Mr.

Webster has issued, in a pamphlet form, a speech made by him, in the Senate, on the 17th ult., accompanied by his letter to some gentlemen on the Kennebec river, dated on the same day. In this letter, Mr. Webster has referred to me again; and he seems to have given himself full license to depart from all the rules of courtesy belonging to a gentleman, and to disobey the obligations of truth, belonging to a man. The angry and reproachful language, in which he has now indulged himself, releases me from all further obligation to treat him with personal respect. Yet I intend not to avail myself of the release. I confess that my habit of looking up to him with political deference and regard, had become so inveterate, that it will require at least another volley of his insults to break it. Under present relations, however, I feel at liberty to use considerable plainness of speech.

For perspicuity, I shall arrange what I have to say, under distinct heads.

1. MR. WEBSTER'S TRIPLE FALSIFICATION OF A PLAIN MATTER OF FACT.

At the first onset, Mr. Webster charges me with an act which, if true, wounds my character deeply, as an honorable man; but, if untrue, destroys his. It is untrue. To give plausibility to his charge, he resorts to the following threefold falsification of a plain matter of fact. In professing to quote from his 7th of March speech, he has suppressed what he did say; he has introduced what he did not say; and he has then applied my criticism, not to his original sentiment on which it was made, but to the counterfeit one which he has surreptitiously put in its place.

In his 7th of March speech, Mr. Webster said, "I would not take pains to re-affirm an ordinance of Nature, nor to re-enact the will of God." This was the sentiment I criticised. It appears in these words, in the *National Intelligencer*, in the *Union*, in the *Republic*, in the *Globe*, and in the pamphlet edition which he dedicated to the people of Massachusetts. But in his Kennebec letter, in order to take away the ground of my criticism, he has interpolated a word into the above sentence, which changes its whole meaning. Pretending to quote himself, he says, "I would not take pains USELESSLY to re-affirm an ordinance of Nature, or to reënact the will of God." By foisting in the word which I have underscored, he changes the entire character of the sentiment advanced. As now stated, nobody can dissent from it; for who would announce, in a distinct proposition, that he would *uselessly* do anything? As originally stated, nobody can assent to it. This perversion is not only false towards me, but it contains a latent confession that he knew he was wrong. Else why did he make the alteration? Why did he think the surreptitious changing of his doctrine to be a less evil than the acknowledgment of it as originally avowed? Had he quoted his original false sentiment truly, the world would have seen that I was right; but in his dilemma, he interpolated a true sentiment falsely, in order to prove that my criticism, on such a sentiment, was wrong. He expunges the original sentiment on which my criticism was made; he forges an opposite sentiment, to which no one would ever object; and then he applies my criticism made on the expunged sentiment, to his counterfeited substitute.

I shall not venture to define or describe a proceeding like this, in words of my own. I trust, as yet, that I obey the apostolic injunction, and possess my soul in patience; and it will take at least another discharge from his battery of wrath to provoke a fitting retort. I may be permitted, however, to use a sentiment uttered by himself, to show how he has condemned himself. In the same connection, Mr. Webster advanced the following idea: "I know no passion more appropriate to devils than the passion for gross misrepresentation and libel." Can any mortal specify a grosser instance of "gross misrepresentation and libel" than when one of the parties to a public discussion has uttered an obnoxious sentiment, and when this sentiment has met with very general reprobation, and when, in the progress of the discussion, the guilty party professes to restate the case, that he should then expunge the false sentiment he originally advanced, foist a trite and common-place one in its stead, and then apply a criticism made on the suppressed sentiment to the forged one? Is it not as palpable a case of alteration, as to change the date of a note of hand in order to take it out of the statute of limitations, or to obliterate the description of the premises in a deed, and put a more valuable estate in its place? This proceeding is worse, if possible, than the former "misrepresentation and libel" of my argument and myself, contained in the Newburyport letter. But the subject is painful, and I leave it.

2. MR. WEBSTER'S RIDICULOUS CLASSICAL BLUNDER.

It affords me great relief to turn from this to the next topic in Mr. Webster's Kennebec epistle. The severity of moral judgment which must be passed upon his fabricated quotation and the use he made of it, is here turned into mirth by one of the most ridiculous classical blunders, that has been made since Lord Kenyon called Julian "the Apostle."

Mr. Webster says: "In classical times, there was a set of small but rapacious critics, denominated *captatores verborum*, who snatched and caught at particular expressions; expended their strength on the *disjecta membra* of language; birds of rapine which preyed on words and syllables," &c., &c.

May I most respectfully ask Mr. Webster on what authority he says there was, "in classical times," any such "set" of "small but rapacious critics" as he here speaks of,—or exemplifies? In my ignorance, I have always supposed the "*captator*" of classical times, to be a kind of "genius" the very opposite of what Mr. Webster describes. Horace, Juvenal, and Livy, represent him as a selfish, sycophantic gift-seeker, or fortune-hunter; not a twister, torturer, or interpolator even, of words and phrases. He was rather a man who managed to get his living out of other folks. His acts and tricks served the purpose of a prehensile organ, such as the finger-like appendage of an elephant's proboscis, by which to pick other men's pockets. The accompanying words, descriptive of his filchings, were

not *torve, ringi*, and so forth; but *callide, blande*, or *blandicule*. If *captator* meant a cavilling, cynical critic, then *captatrix* should mean a scold, a vixen, or virago; but its true meaning was "a fawning gossip," or "mean flatterer." In our days, the equivalent or *fac simile* of the classical *captator*, would be the man who coaxes other people to accept his bills, or endorse his notes, or lend him minute-money, *and then never pays;* or the man who gets life-settlements for supporting class interests, and so brings odium on their unquestionable merits. No mistake could be greater than that the old *captatores* "expended their strength on the *disjecta membra* of language," or "gorged themselves with the garbage of phrases, chopped, dislocated, and torn asunder, by themselves." On the contrary, they were "gentle as a sucking dove." Their "*disjecta membra*" rather resembled outlawed promissory notes, protested drafts, overdrawn bank accounts, unpaid scores to shopmen, &c. There was nothing like the harpy about them, as Mr. Webster seems to suppose, in this remarkable description of his, which is as rhetorically unsavory as it is classically untrue. What malignant sprite could have been at Mr. Webster's elbow when he penned this wrathful paragraph, and suggested to him a word pregnant with such unutterable associations!

So far from there being any "set" of critics, in classic times, denominated and known as *captatores verborum*, I doubt whether even the abstract noun "*captatio*" occurs half a dozen times, in all the classics, in connection with the genitive of his pretended appellation. He could hardly have made a greater or more ludicrous mistake. It is exceedingly to be regretted, after the numerous instances we have lately had of Mr. Webster's bad logic, and bad humanity, and bad discoveries of natural law, that he should now offend the classical taste of the country, and bring discredit upon the New England colleges, by his bad Latin. This whole anti-classical paragraph about "*disjecta membra*," and "chopping," and "gorging," and "uncleanness," is an unclean conception of his own; not a pure but an impure invention; not intellectual but epigastric in its origin.

3. MR. WEBSTER'S ERRONEOUS GEOGRAPHY, AND HIS FALSE CITATION OF AUTHORITIES.

Mr. Webster's geographical statements on this subject are worthy to be placed side by side with his classical. He says, the extent of New Mexico, north and south, on the line of the Rio Grande, "can hardly be less than a thousand miles." This makes a little more than *fourteen* degrees of latitude. Now, as its northern boundary is in 42°, its southern must be as low as 28°. This is *four* degrees below El Paso del Norte. Yet Mr. Webster, on the 13th of June last, declared himself in favor of fixing the northern boundary of Texas at or near El Paso, and more than four degrees of latitude north of what he here says is the southern boundary of New Mexico. He also supported that part of the Compromise bill which proposes to give Texas, not only these four degrees of latitude, but money also, for taking what, as he now says, belongs to New Mexico and the United States. How can these views stand together?

In his 7th of March speech, Mr. Webster declared it to be a natural impossibility that African slavery could ever exist "in California or New Mexico."—P. 42. He now defines the southern boundary of New Mexico. It can hardly be less, says he, than "a thousand miles" from the forty-second degree of north latitude. This places it four degrees south of El Paso. He is in favor of that part of the bill which gives these four degrees to Texas. According to him, therefore, should Texas get possession of these four degrees of what is now New Mexican territory, slavery will exist, as far up as the old southern boundary line of New Mexico, by virtue of the laws of Texas; but beyond this line, although within the bounds of Texas, it will not exist, because forbidden by the "will of God." Hence the extraordinary spectacle will be exhibited, of the existence of slavery coming plump up to the south side of an imaginary line, by the laws of Texas, while on the north side of the said imaginary line, its existence will be cut square off by the "will of God," although both sides are within the same political jurisdiction. This will be a miracle, compared with which the supposed miraculous preservation of the Jewish feature and complexion, for two thousand years, will be unworthy to be mentioned. It remains to be seen, however, whether this miracle will be vouchsafed to Mr. Webster, as a proof of the Divine favor.

On the 5th of June, Mr. Webster voted against incorporating the "Proviso" into the Governments for New Mexico and Utah, because slavery was already prohibited there by "Asiatic scenery" and the law of "physical geography." On the next day, too, he voted against the following amendment offered by Mr. Walker: "And that peon servitude is forever abolished and prohibited." Whether he so voted because this species of slavery, (which is an existing institution at the present time,) was prohibited by "scenery" and "geography," does not appear.

But on the 17th of June, Mr. Webster, in the Senate, suggested a qualification of his doctrine as laid down on the 7th of March, viz: that "every foot of territory of the United States has a fixed character for slavery." An uncertainty as to the boundary line between New Mexico and Texas, gave rise to this qualification. "Let me say to gentlemen," said Mr. Webster, "that if any portion which they or I do not believe to be Texas, should be considered to become Texas, then, so far, that qualification of my remark is applicable."—(*Cong. Globe*, 31st Cong., 1st sess., p. 1239) That is, if the Compromise bill should so establish the boundary line between New Mexico and Texas, as that "any portion [of New Mexico] which they or I [other gentlemen or Mr. Webster,] do not believe to be Texas, should be considered to become Texas," then, as Texan territory, it might lose its "fixed character," and become slave territory, notwithstanding the "ordinance of Nature" and the "will of God." But, strange to say, on this same 17th of June, the Kennebec letter was written, which carries the southern boundary of Mexico, on the east side of the Rio Grande, four degrees below El Paso, and, of course, includes all that region within New Mexico, and therefore within the

"ordinance of Nature" and the "will of God!" So that, after all, he acknowledges that the "ordinance of Nature" and the "will of God" may be overridden by the laws of Texas.

But his citation of authorities is among the most surprising of all his aberrations from fact. He first quotes Major Gaines, who, as he says, "traversed a part of this country during the Mexican war." By "this country," I suppose he means New Mexico. If he does not mean New Mexico, then the citation has no relation to the subject. If he does mean New Mexico, then he asserts what is not true. Major Gaines did not go within four or five hundred miles of New Mexico, during the war; and if the quotation from him was designed to create the belief that, in what Major Gaines said, he was speaking of New Mexico, it was as gross an imposition as could well be made.

The next citation is from Colonel Hardin. Two sentences are taken. I transcribe the first with Mr. Webster's italics.

"*The whole country is miserably watered; large districts have no water at all. The streams are small, and at great distances apart.* One day we marched on the road from Monclova to Parras, *thirty-five miles, without water;* a pretty severe day's march for infantry."

And what country does this describe?

"From Monclova to Parras, thirty-five miles!" says Colonel Hardin. And where is Monclova? Away down south in Coahuila, hundreds of miles from any part of New Mexico.

I submit the following notes, one from the Colonel of the regiment in which Mr. Gaines was a major; and the other from a major in the regiment of which Mr. Hardin was Colonel.

HOUSE OF REPRESENTATIVES, *June* 27, 1850.

SIR: In reply to your note of this date, I state that Major Gaines did not, during the Mexican war, travel through any part of New Mexico. Major Gaines entered Mexico at Camargo, on the Rio Grande; was engaged near Saltillo, until he was captured and taken to the city of Mexico; and thence he returned to the United States, by the way of Vera Cruz.

I am, sir, very respectfully, &c.,

HUMPHREY MARSHALL.

P. S. In reply to your verbal inquiry, whether Colonel Hardin was in New Mexico, I state, that Colonel Hardin was attached to General Wool's command, and passed from San Antonio de Bexar, by the Presidio de Rio Grande, Monclova, and Parras, to Saltillo; so that he did not enter New Mexico. H. M.

Hon. H Mann.

HOUSE OF REPRESENTATIVES, *June* 28, 1850.

SIR: In reply to your note of this date, I have the honor to say, that I was an officer of the First Regiment Illinois Volunteers, commanded by Colonel J. J. Hardin during the Mexican war, and that during the time Colonel Hardin was in command of the regiment, he was not in New Mexico. His nearest point to New Mexico was Monclova or Parras, which was several hundred miles distant. In my opinion, Colonel Hardin was never in New Mexico; he certainly was not in that country during the Mexican war.

Respectfully, W. A. RICHARDSON.

Now what possible excuse can be offered for these misleading citations? What information would be given of the soil of the Genesee valley of New York, by proving the condition of the sands of Cape Cod?

Mr. Webster next quotes, for the second time, the letter of Hugh N. Smith, Esq. This letter, if taken by itself, would render it improbable, in Mr. Smith's opinion, that slavery would go into New Mexico; but it by no means proves the physical impossibility of its existence there. But what different language has Mr. Smith since held in his Address to his constituents? I will quote a few passages from this Address to show its general drift and intent:

"Your State [New Mexico] is threatened with dismemberment, and, *what is yet more fatal, the introduction of slavery into its bosom.*"—*Page* 1.

"The most formidable part of this combination against you is that which originates in the slave interest. It not only rallies against you the whole slaveholding South, but all the influence of selfish, venal and ambitious men in the North, looking to speculations in discredited bonds and land jobbing, *or to the political honors which the combined vote of the South may promise.*"—*Page* 2.

"The doctrine of the slaveholding States, in regard to their domestic institutions, is non-intervention; but with regard to yours, it is *instant intervention*, to set at nought the prohibition of slavery, which you brought with you into the Union," &c.—*Ib.*

"I am myself a native of the section [Mr. Smith is a Kentuckian] whose fate I deplore, and if my duty did not require, I would be the last to advert to the malady that preys upon its life. * * * * The schemes of those who would bind you to the destiny of the slave States, render it necessary that your Representative should be excluded from the Halls of Congress."—*Page* 3.

"*You are left prostrate, that Texas may dismember and divide New Mexico, and subject her to Southern influence; that negro slavery may be introduced into the remnant of territory that may not be appropriated to Texas; and, finally, that the region thus secured to Southern policy may become the stock on which to graft new conquests from Mexico.*"—*Page* 4. [These are Mr. Smith's italics.]

"The first step in this process is to supplant the fundamental municipal institutions brought by New Mexico with her into the Union, by a Territorial Government which, by omitting the inhibition against slavery in the Congressional act, failing to reserve that contained in the Mexican code, and preventing the people of the Territory from legislating upon the subject of slavery, and from re-enacting the prohibitory clause, will unquestionably abolish all protections against that institution; and, indeed, more effectual legislation for the extension of slavery into New Mexico could not be enacted."—*Page* 5.

"The whole body of Southern influence, now that mining is a mania, would combine to pour an immense colony of slaves into New Mexico. The consequence of this would be to level the whole population of New Mexico with the new caste brought into competition; and you, my Mexican fellow-citizens, who till your own soil with your own hands, would be compelled to fly your country, or be degraded from your equality of freemen, forfeiting your hopes of rising to the new elevation promised by your alliance with the great North American Republic, and living only to witness the ruin of all that renders life desirable."—*Page* 6.

This is what Mr. Smith says, when he writes home to his own people, who know all about their own country, and its danger of being invaded by slavery.

Now, let the reader suppose himself to have read from Mr. Smith's Address, as much more, of the same kind as the above, and then say how far his evidence goes to sustain Mr. Webster's discovery, that slavery can never go into New Mexico. Mr. Smith's Address has been published for two months; it has been on the tables of members, published, and quoted from in the newspapers, and yet Mr. Webster continues to cite Mr. Smith, as a witness in his favor. What influences were used to induce Mr. Smith to withhold, in the letter to Mr. Webster, the facts and views which he has so clearly brought out in the letter to his constituents?

The next and last citation is from an officer at Santa Fe. No name is given. We are informed neither of the character of the author nor of his means of information; and if this authority is as fallacious and deceptive as the preceding, it is a great deal worse than nothing. It would be like

the testimony sometimes offered in court, which ruins the cause and dishonors the counsel.

4 MR. WEBSTER'S "DILIGENT READING."

Mr. Webster says, in this letter, "I have studied the geography of New Mexico diligently, having read all that I could find in print." According to this statement, he must have read the letters of Mr. James S. Calhoun, Indian agent at Santa Fe, communicated to Congress by the President, on the 23d of January last. Speaking of the Navajoes, a tribe of 7,000 Indians, within the limits of what it is proposed to include in New Mexico, Mr. Calhoun says, that it is "not a rare instance for one individual to possess 5,000 to 10,000 sheep, and 400 to 500 head of other stock" (P. 184) That their country "is rich in its valleys, rich in its fields of grain, and rich in its vegetables and peach orchards." (P. 199.) "We encamped," says he, "near extensive corn fields, belonging to the Navajoes." (P. 197.) Their "soil is easy of cultivation, and capable of sustaining nearly as many millions of inhabitants as they have thousands." (P. 202) A country owned by one tribe capable of sustaining nearly 7,000,000 inhabitants, and yet, as Mr. Webster avers, inaccessible to slavery, on account of its barrenness!

Speaking of the Indians, (Pueblos) on the Rio Grande, Mr. Calhoun says: "These people can raise immense quantities of corn and wheat, and have large herds of sheep and goats. The grazing for cattle generally is superior." (P. 206.) Of the more western Pueblos, he says, they have "an extent of country nearly four hundred miles square;"—more than twenty times as large as Massachusetts;—"they have rich valleys to cultivate, grow quantities of corn and wheat, and raise vast herds of horses, mules, sheep and goats, all of which may be immensely increased by properly stimulating their industry, and instructing them in the agricultural arts." (P. 215)

I might cite much more from the same authority, to the same effect; but I do not refer to Mr. Calhoun so much for the purpose of showing the agricultural capabilities of New Mexico, as of asking why Mr. Webster did not quote from this recent official work, which has been lying on the tables of members for months, instead of quoting descriptions from military officers respecting a country which he well knew they had never seen?

There is good reason to believe that there are wide tracts of fertile land lying between the Sierra de los Mimbres and the Sierra Nevada on the east and west, and the 32d and 35th degrees of latitude. The waters at the mouth of a river give no doubtful indication respecting the country from which they flow. If the volume be large, we know it must drain an extensive region; for the waters of a great river cannot be supplied from a narrow surface. So if the water be muddy, as is said to be the case with that of the Colorado, it is proof that it courses through a diluvial country. But however this may be, all accounts concur in representing New Mexico to be rich in mines; and mines are the favorite sphere for slavery, as the ocean is for commerce.

In his late speech in the Senate, Mr. Davis of Massachusetts said that however it might be with regard to employing slaves in New Mexico for raising crops of corn or cotton, there was still one purpose to which they might be applied,—the most odious of all purposes,—to raising crops from themselves. From this "Southern Hive," the markets of Texas and Louisiana might be supplied with "vigintial" crops of human beings. It will be incumbent on Mr. Webster to invent some new "physical" law to meet this astute suggestion of his colleague. "Asiatic scenery" will hardly answer his purpose here.

Within the limits of the proposed Territory of New Mexico, it is supposed that that powerful and comparatively civilized people, the Aztecs, once resided. Can any person for a moment believe, that the Aztecs ever grew to opulence or power, in any such sterile and desolate region, as Mr. Webster's "diligent reading" portrays?

But what must satisfy every man whose blindness is not of the soul rather than of the senses, is the fact, that the people of New Mexico, in the Constitution which they have just framed, have embodied a prohibition of slavery in their fundamental law. Had slavery been forbidden there by any "Asiatic scenery" or by any "law of physical geography," who should know it better than they? They have had slavery amongst them heretofore, and therefore they know it can invade them again, and therefore they forbid it; and in the choice of Senators to Congress under the new organization, should any candidate put forward the vagary, the phantasm, the fatuity, that slavery *cannot* exist among them, they would doubtless deem him a less fit subject for the Senate of the United States, than for sanitary treatment.

How stands the evidence, then, on the question, whether "California and New Mexico," from their geology, their geography, or their Asiatic scenery, are inaccessible or not, to the invasion of slavery? It is well known that the war with Mexico was provoked, and violently precipitated upon the country, in order to extend the domain and the power of slavery. In negotiating for the cession of California and New Mexico, the Mexican Commissioners strove to introduce a prohibition against slavery into the treaty. This demonstrates that they thought slavery could exist there. Our Minister declared that he would assent to no such stipulation, though they would cover all the land a foot thick with gold. This shows the tenacity with which Mr. Polk's Administration, and all its Southern friends, adhered to their original purpose of obtaining new territory for slavery. In view of this, the House of Representatives again and again voted to apply the Proviso to whatever territory should be obtained. When the treaty was ratified, many of the leading Senators voted against the clause for acquisition, foreseeing the present controversy, and hoping to avert it. Even after the treaty was ratified, leading Southern Whigs in the House voted against paying the first instalment under it, still clinging to the hope that the territory might be restored to Mexico, and this cause of dissension withdrawn. During all this period, fourteen of the Northern Legislatures, many of them again and again, voted that the Proviso should be applied. The present six months' contest, in the Senate and House, between the North and the

South, is conducted solely on the conviction that slavery *may* exist in the Territories; and that it will or will not exist there, according as the law allows or forbids it. Otherwise, it would be the most nonsensical and nugatory discussion ever engaged in out of a lunatic asylum. Once make it as clear as any law of physical nature, that slavery can never transgress the bounds of the new territories; and there is not a man so demented that he would any longer contend either for the Proviso, or against it. Mr. Webster was always of the same opinion, and has declared it a hundred times. In his Marshfield speech, September 1, 1848, he said, "He [General Cass] will surely have the Senate, and with the patronage of the Government, with every interest that he as a Northern man, can bring to bear, coöperating with every interest that the South can bring to bear, we cry safety before we are out of the woods, *if we feel that there is no danger* [of slavery] *as to these new Territories.*" Up to the 7th March, 1850, then, when he abandoned all the doctrines and sentiments he had ever before advocated on this subject, and when he incurred the public, hearty approval and encomiums of Mr. Calhoun, by his moral agility, in springing, at one leap, from Massachusetts to South Carolina;—until this time, Mr. Webster had always held, that slavery would invade the new Territories, if not barred out of them by positive law. And what would be still more remarkable, if the doctrines of the 7th of March speech had the least shadow of soundness in them, is, that they have now been before the public for more than four months, and, so far as I know, not a single Southern man has been converted by them. Are not Mr. Benton, Mr. Mason, Col. Davis, and thousands of others, individually, as good judges, or as good witnesses, as he is? Since the speech, the people of New Mexico have prohibited slavery in their Constitution, because they knew it to be possible among them. Before the speech, California did the same, and for the same reason. The Nashville Convention has just resolved "That California is peculiarly adapted for slave labor, and that if the tenure of slave property was by recognition of this kind secured in that part of the country south of 36° 30′, it would in a short time form one or more slaveholding States, to swell the number and power of those already in existence." Even those who seek to apologize for Mr. Webster, avow at the same time, their disbelief in his doctrine. Such is the evidence, on the one side and on the other, as to the possibility or impossibility of slavery in the Territories. Mr. Webster is against the whole world and the whole world is against him, and this, too, on a question already settled by history and experience. He is just as much to be believed, as a man who looks up into the clear midnight sky, and denies the existence of the heavenly host, while all the stars of the firmament are shining down into his eyes.

To increase the overwhelming proof against Mr. Webster, I add the following:

HOUSE OF REPRESENTATIVES, *June* 1, 1850.

Hon. S. R. Thurston, Delegate from Oregon.

DEAR SIR: In a speech delivered by you, in the House of Representatives in March last, I understood you to say that you had been in the valley of the Great Salt Lake, and that you were acquainted, from personal observation, with a large part of the territory of California. Will you be so good as to give me your opinion, and the reasons for entertaining it, of the probability or improbability of the introduction of slave labor into any part of the territory recently acquired by the United States from Mexico; provided such introduction be not prohibited by law?

I wish to obtain your opinion in regard to other kinds of labor, as well as agricultural; because, as it seems to me, a most unwarrantable, if not a most disingenuous attempt has been made, to lead the public to believe that no form of slave labor will ever be introduced there, because, possibly, or probably, it may not be introduced for agricultural purposes.

A reply at your earliest convenience, will much oblige,

Yours, very truly,

HORACE MANN.

WASHINGTON, *June* 10, 1850.

Hon Horace Mann:

I received a note from you some days ago, making certain inquiries, but which, up to this time, I have been unable to answer. I desire to take no part in the question now dividing the country; but as you have asked my judgment upon a matter which appears to be a disputed point, I cannot, consistently with the law of courtesy, refuse you an answer. That answer will be in conformity with what I have frequently said, heretofore, in private conversation with gentlemen on this subject

The point of inquiry seems to be, whether slave labor could be profitably employed in Oregon, California, Utah, and New Mexico. If the nature of the climate and resources of these countries are such, as to furnish a profitable market for slave labor, it appears to be conceded, on all sides, that it would be introduced, if left free to seek profitable investment, like other capital. The whole point at issue, then, is dependent, as it is conceived, upon the determination of the first point of inquiry. Hence, to that point, only, it is necessary for me to confine my answer.

I need not remind you of the law regulating the investment of capital. It will always go where, under all circumstances, it will yield the greatest return to the owner. Upon this principle I am very clear, that slave labor, if unrestricted, could be employed in Oregon, with at least double the profit to the owner of the slave that it now yields in any State of the Union. I am uninformed as to the usual price of slave labor in the States, but the price paid to Indians in Oregon during the past year, for labor, has ranged from two to three dollars per day. Domestic negro servants, whether male or female, who understand the business of housework, would command, *readily*, five or six hundred dollars a year. I recollect well, that there was a mulatto man on board the vessel in which I took passage from Oregon to San Francisco, who was paid *one hundred and eighty* dollars per month for his services as cook. I will not stop to particularize further, in regard to the inducements Oregon would offer to unrestricted slave labor, but will simply add, that a very large number of slaves might now be employed in Oregon at annual wages sufficiently large to purchase their freedom. I think, therefore, that the point is settled so far as Oregon is concerned; and that slave labor, if it had been left free to seek profitable employment, would readily find its way to that Territory.

As to California, I am equally clear. California will always be a mining country, and wages will range high. At present, slave labor in California would be more profitable than in Oregon. And I have always been of the opinion, that wherever there is a mining country, if not in a climate uncongenial to slave labor, that species of labor would be profitable. That it would be in the California mines, is evident. A good able-bodied slave would have commanded, in California, during the past year, from eight to ten hundred dollars per annum. When it is recollected that one hundred dollars per annum, upon an average, is considered a good compensation for their labor in the Southern States, it is idle, in my judgment, to contend that slaves would not be carried to the California market, if protected by law.

The greatest impediment which white labor has to encounter in the mines, is the intensity of the heat, and the prevalence of bilious disease. The one is almost insufferable, while the other is pestilential. Against both of these the negro is almost proof. Now, while white labor is so high, it is evident that no one can hire a white laborer, except at a rate that would consume his profit. Not so with negro labor. That species of labor might be obtained for half the amount which you would have to pay for white labor. The result would be a profit alike to the hirer and seller of slave labor. There is no doubt, in my judgment, that almost any number

of slaves might be hired out in California, were the whites willing to allow it, at from eight to ten hundred dollars a year. This is pay so much above what their services command in the States, as to satisfy any one, that could this species of service be protected in California, it would rush to the Pacific in almost any quantity.

Let us next turn our attention to Utah and New Mexico. I have no doubt, from what knowledge I have of those countries, that they will turn out to be filled with the richest mines. I clip the following from a recent paper, containing the news from Texas and Chihuahua.

"Mr. James was informed, by Major Neighbours and Mr. Lee Vining, that they had been shown by Major Stein, some gold washed out by his troops, on the Gila river, in a short excursion to that stream.

"It is reported that, at the copper mines above El Paso there are about one hundred tons of pure copper lying upon the ground. This had been got out by Mexicans, and abandoned when attacked by Indians.

"There are are at El Paso, in the hands of different persons, several large amounts of silver ore, taken from the mines in that neighborhood. With guaranties of titles to lands, and protection from Indians, only a short time would elapse before all these mines would be well worked, and we would have large quantities of metal seeking a market through this place."

And if you consult Fremont's map, printed by order of the Senate in 1848, you will find, near the source of one of the branches of the Gila river, "copper and gold mines" laid down. And if I am not greatly mistaken, it will turn out that the Mormons are in possession of the richest kind of mines, east of the Sierra Nevada. It is known, too, that silver and copper mines have, for many years, been worked in New Mexico; and I am informed by Hugh N. Smith, Esq., that there are in that Territory, gold, silver, copper, lead, and zinc mines of the richest quality, and that the reason why they have not latterly been worked more extensively is that it is prevented by the incursions of the Indians. He is of the opinion, and he is borne out by what history we can get on the subject, that when these mines shall come to be explored, their wealth will turn out to be enormous. When you have once cast your eye over that country lying west of the Rocky Mountains, and east of the Sierra Nevada, and are informed of the peculiarity of the gold-bearing region, you at once become convinced that the United States is in possession of mineral wealth so vast, that ages will not be able to measure its extent. And when these mines shall begin to be developed, and their unquestionable richness known, population will set that way, attended with the usual consequences, high prices, and a demand for labor. If slave labor is like other capital, if it will go where it is best paid, then we have a right to say it will seek these mines, and become a part of the producing capital of the country where those mines are located. That these whole regions are filled with rich mines, is little less than certain, and that they can be profitably worked by slave labor is sure. Hence, were I a Southern man and my property invested in slaves, I should consider the markets of New Mexico, Utah, and California, for slave labor, worthy of an honorable contest to secure.

I am, sir, with due consideration, yours, truly,

SAMUEL R. THURSTON.

5. CONTRADICTION IN MR. WEBSTER'S SPEECHES.

The Kennebec letter has another most extraordinary and discreditable passage. It is near the close. Mr. Webster quotes from a speech delivered by him in the Senate, March 23, 1848, says it was published in newspapers and circulated in pamphlet form, and that that speech contained the same doctrines in regard to the "legal construction and effect of the resolutions" for admitting Texas, as are contained in the speech of the 7th of March. He says nobody complained then, and he wonders that anybody should complain now.

It is very remarkable that such a man as Mr. Webster should furnish, in the very quotation which he offers, the means of utterly confuting the assertion which he makes. I suppose this can be accounted for only on the ground, that he now occupies a position so antagonistic to that which he has abandoned that he can hardly refer to his former views without self-impeachment and self-conviction. Let passages from the two speeches be placed side by side, to show, not their identity, but their utter irreconcilability.

March 23, 1848.	March 7, 1850.
[*A passage quoted by himself.*] "It shall be *in the power* of Congress hereafter to make *four* other new States out of Texan territory."	"I wish it to be distinctly understood, to-day, that, according to my view of the matter, this Government *is solemnly pledged by law and contract* to create new States out of Texas," &c.—*P.* 42.

The first quotation only asserts a "power" in Congress to create new States; the last affirms an obligation, "by law and contract" to do so. How could Mr. Webster have expected that this broad distinction between *power* and *duty*, between *option* and *obligation*, could escape the attention of his readers?

But there is another discrepancy or contradiction still more remarkable:

March 23, 1848.	March 7, 1850.
"It shall be in the power of Congress hereafter to make *four* other new States out of Texan territory."	"——— the guaranty is, that new States shall be made out of it, and that such States as are formed out of that portion of Texas lying south of 36 deg. 30 min may come in as slave States to the number of *four*, in addition to the State then in existence."—*P.* 29.

The first speech speaks of the *power* of Congress, but the last of the *obligation* of Congress, to admit new States out of Texan territory; the first speaks of "four other new States;" but the last of the "guaranty" to admit "*slave* States to the number of four." Yet the first speech is cited, to men who can read and write, as identical "in legal construction and effect" with the last. The motto under which Danton attempted to carry himself through his bloody career, was "*L'audace, l'audace, toujours l'audace.*"—"Audacity, audacity, always audacity."

But what else did Mr. Webster say, in his speech of the 23d of March, 1848? Referring to the debate which took place in December, 1845, on the final act for admitting Texas, Mr. Webster said: "And I added, that while I held, with as much faithfulness as any citizen of the country, to all the original arrangements and compromises of the Constitution under which we live, I never could, and I never should, bring myself to be in favor of the admission of any States into the Union as slaveholding States."* This is what Mr. Webster reports himself to have said when the final vote on the admission of Texas was immediately to be taken, and when he commenced his speech by saying, "I am quite aware, Mr. President, that the resolution will pass,"—meaning the resolution for the admission of Texas. Mr. Webster's "never could and never should" covered the exact case of the then contemplated future slaveholding States to be formed out of Texas. While in the broadness of its terms it embraced all slaveholding States, whenscever, or whencesoever they might come, it had special and pointed application to any slave State to be thereafter formed out of Texan territory.

* Cong. Globe, 1st session 30th Congress, p. 533.

In the same speech of December 22, 1845, Mr. Webster spoke as follows:

"It may be said that according to the provisions of the Constitution, new States are to be admitted on the same footing as the old States. It may be so; but it does not follow at all from that provision that every territory or portion of country may at pleasure establish slavery, and then say we will become a portion of the Union; and will bring with us the principles which we may have thus adopted, and must be received on the same footing as the old States. It will always be a question whether the old States have not a right, (and I think they have the clearest right,) to require that the State coming into the Union should come in upon an equality; and, if the existence of slavery be an impediment to coming in on an equality, then the State proposing to come in should be required to remove that inequality by abolishing slavery, or take the alternative of being excluded."

He also said, in the same speech, "I agree with the unanimous opinion of the Legislature of Massachusetts."

And what was this "unanimous opinion of the Legislature of Massachusetts"? Among many other things equally decisive, the Massachusetts Legislature, on the 26th of March, 1845,—and, of course, long after the annexation resolutions had been passed,—declared as follows:

"And whereas the consent of the Executive and Legislative departments of the Government of the United States has been given, by a resolution passed on the 27th of February last, to the adoption of preliminary measures to accomplish this nefarious project, [the admission of Texas, with the stipulation to admit four more States out of its territory;] therefore, be it

"*Resolved*, That Massachusetts hereby refuses to acknowledge the act of the Government of the United States, authorizing the admission of Texas, as a legal act, in any way binding her from using her utmost exertions in co-operation with other States, by every lawful and constitutional measure, to annul its conditions, and defeat its accomplishment.

"*Resolved*, That no Territory hereafter applying to be admitted to the Union, as a State, should be admitted without a condition that domestic slavery should be utterly extinguished within its borders, and Massachusetts denies the validity of any compromise whatsoever, that may have been, or that may hereafter be, entered into by persons in the Government of the Union, intended to preclude the future application of such a condition by the people, acting through their representatives in the Congress of the United States."

Such were the opinions which Mr. Webster then expressed, and such the resolutions of the Legislature of Massachusetts, with which he agreed. Yet he now professes to wonder that anybody can see any difference between the doctines of those speeches and resolutions, and those of his speech delivered on the 7th of March.*

6. MISSTATEMENT OF FACT, IN REGARD TO FUGITIVE SLAVES.

Mr. Webster says that, previous to writing his Newburyport letter, he made "diligent inquiry," of members of Congress from New England, to ascertain how many arrests of fugitive slaves had been made in their time; and he adds, "the result of all I can learn is this: No seizure of an alleged slave has ever been made in Maine."

Now, two such cases have happened in the State of Maine. One took place in the eastern part of the State, about 1835 or '36. The other happened at or near Thomaston, a little later. In this latter case, the fugitive came to Maine in a Thomaston vessel, whose master was afterwards demanded as a fugitive from justice. This demand gave rise to a prolonged correspondence, I think, with no less than three Governors of Maine. This correspondence was extensively circulated through the newspapers, or referred to by them, and it would seem hardly possible that Mr. Webster should not have seen it. Since the Newburyport letter was published, this misstatement of fact has been noticed in the Maine newspapers, yet no retraction is made. The misstatement is allowed to be spread over the whole country, uncorrected by its author. Mr. Webster then adds, "No seizure of an alleged fugitive slave has ever been made in Vermont." Tradition, and, as I believe, authentic history, contradict Mr. Webster here. It is said by "members of Congress" from Vermont that an alleged fugitive was carried before Judge Harrington of Vermont in 1807, and on his being asked what evidence would satisfy him that the person was a slave, he replied, "A bill of sale from Almighty God."

But even if these statements of Mr. Webster, with regard to the New England States, were all true, it would avail him nothing; for, in the eye of patriotism, it matters not where such seizures are made. I refer to this, only to show that Mr. Webster is not to be relied upon in these matters, either for the accuracy of his original positions, or for a retraction of them, when their error is pointed out by the public press. I wish not to be understood, *on this particular point*, as imputing to Mr. Webster an intentional misstatement; because he accompanied his original statement with a salvo. He confessed,—and he is entitled to the full benefit of the confession,—that his information

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* Prof. Stuart, in a pamphlet entitled "Conscience and the Constitution," pp. 78-9, steps in to defend Mr Webster's position that we are bound, by contract with Texas, to admit from her territory, "slave States to the number of four;" and he incidentally refers to and combats my views on this subject.

I respectfully submit to the reverend and learned Professor a single consideration, which I trust will convince him that I am not in error.

For argument's sake, admit the contract with Texas to be unimpeachable; although, if it be so, I see not why any one Congress may not absorb and exhaust all the power to admit new States, which the Constitution contains, by making contracts, for centuries to come, for all the new States that shall be admitted; and for all the applications for admission that shall be rejected. But, admitting the validity of the Texan contract, what does it purport? That "new States," "not exceeding four," "may be formed out of the territory thereof." Those south of 36 deg. 30 min. may be slave; that, or those, north of 36 deg. 30 min shall be free; the whole, "not exceeding four." Here, then, is an executory and mutual contract. It is executory: because it is not to be executed at the time of making, but *in futuro*. It is mutual; because, for Texas, and for the one or more slave States, south of 36 deg. 30 min., there are to be one or more free States, north of it.

Now, the principle is so clear that I think no one will for a moment dispute it, that when an executory and mutual contract is to be executed say at four different times, each preceding act of execution must be such as to allow of the ultimate execution of the whole. Neither the first, second, nor third act of execution, must be so executed as to render the fourth impossible. Neither the first, second, nor third act must be so executed in favor of either of the parties, as to render the execution of the fourth, in favor of the other party, impossible. But if Texas can have "slave States to the number of *four*," formed in succession out of her territory, then, as the whole number to be formed is not to exceed "four," there can be *no* free State formed, under the alleged contract.

It is not within my knowledge that such an interpretation of this supposed contract was ever suggested by any Texan citizen, or by any Southern man. I suppose it to have been advanced, *first* by a Northern Senator; and seconded *first*, by a Northern Divine.

might not be "entirely accurate," though he supposed it not to be "materially erroneous." It is "materially erroneous;" and though one error has been exposed in the Maine papers, he does not rectify it. Possibly, he does not know it.

7. FURTHER MISSTATEMENT OF FACT.

While holding Massachusetts up to reproach for "growing fervid on Pennsylvania wrongs," Mr. Webster draws succor and encouragement from the Society of Friends, and especially from the Friends of Pennsylvania. He says that they remain "of sound and disposing minds and memories;" and he contrasts their wisdom and composure with the "vehement and empty declarations, the wild and fantastic conduct of both men and women which have so long disturbed and so much disgraced the Commonwealth" of Massachusetts. He then adds, "I am misled by authority which ought not to mislead, if it be not true, that that great body approves the sentiments to which I gave utterance on the floor of the Senate." I will now show that this alleged approval by the Friends, though worthy of any price but truth, was too dearly bought.

It is well known that the Friends are divided into two great denominations. Each has its Periodical, one now in its eighth, the other in its fourth year. In the numbers published since the appearance of the Newburyport letter, both these periodicals do not "approve," but repudiate and denounce the sentiments to which Mr. Webster gave utterance "on the floor of the Senate."

The *Friend's Intelligencer* deals at length with Mr. Webster's "sentiments," on the "Fugitive Slave Bill;" on the legislation of the North for the protection of its own citizens; on his pseudo-discoveries in "physical geography;" and on the "legal construction and effect" of the Texas resolutions; and it condemns them all.

The *Friend's Review* dissents not less positively from Mr. Webster's positions; and both call him severely to account for the defamation of themselves, which his letter implies.

On his "sentiments" respecting fugitive slaves, the "*Review*" observes that they have yet to learn "that that part of his speech was approved by any member or professor of the society."

I wish I had space to quote from these able articles, but must forbear.

John G. Whittier, Esq., speaking for the Quakers of New England, gives "a peremptory denial" to Mr. Webster's statement. I quote the following paragraph from him:

"Now, we undertake to say that there is not a member of the Society of Friends, in free or slave States, who, whether acting as a magistrate or a citizen, could carry out the provisions of this most atrocious bill, without rendering himself liable to immediate expulsion from a society whose character would be disgraced, and whose discipline would be violated, by such action. It has been, in times past, the misfortune of the Society of Friends to be vilified, caricatured, and misrepresented; but we remember nothing, even in the old days of persecution, so hard to bear as the compliments of the Massachusetts Senator. Whatever his 'authority' may h been, we do not hesitate to pronounce it unqualifiedly false the last degree."

Now what shall be thought of a cause th requires such a defence, or of the man that c make it!

There are many other points presented by M Webster's speech of the 7th of March, or by wh he has since said and written to defend it, whi seem to me as unwarrantable in fact, and as re rehensible in principle, as any above enumerate I shall close these notes, however, with one co ment more; reserving others, though sincere hoping never to have occasion to use them.

Among the excoriations with which Mr. We ster amused himself and his Southern new-boi pro-slavery admirers, on the 7th of March la he flayed nobody half so deeply or so compl cently, as he did his old fellow-senators, Messr Dix of New York and Niles of Connecticut. H scored them to the living flesh, and then sooth their smarting wounds by vitriol and caustic, though he loved them. Their agency in th Texas swindle, he made odiously conspicuous. H taunted them with heart-piercing inuendo fo their compulsory retirement from public lif And then he portrayed them as occupying thei enforced vacation in attempting to rouse the pe ple to save those regions from the curse of slavery which, but for their sins, never would have bee exposed to it. He worked up the scene so graphi cally, that every one mocked at their contempti ble plight, and at the ridiculous contrast betwee the swiftness of their offence, and the lameness o their expiation. The effect was dramatic. Th pro-slavery part of the gallery and the floor re sponded with a shout of laughter. Yet devote and long-tried friends of Mr. Webster were there whom no darkness of blindness could prevent fro seeing that his bitter sarcasm against the ex Senators, though calculated to make the "unskil ful laugh," must make the "judicious grieve. They could not fail to see that he, Mr. Webste himself, at that very moment was occupying pre cisely the same pro-slavery ground, which Messrs Dix and Niles had occupied, when they brough in Texas and "re-annexed" California and Nev Mexico. He was exerting all his great talents t do an act of the same character which Messrs. Di and Niles had done;—that is, to open new ter ritory to slavery. And doubtless the first though which arose in many a mind was the same whic spontaneously arose in my own, that, should he suc ceed in arguing down, or laughing down the "Wil mot," as he twice scornfully called the Proviso and should he then betake himself to penitenc and prayer, and by years of effort, strive t stay back from slavery the regions he ha doomed to it, he would only have elevated himsel to the very "platform" on which Messrs. Dix and Niles stood *when he laughed at them.*

July 8, 1850.